PROPERTY AND CASUALTY INSURANCE (C) COMMITTEE

Property and Casualty Insurance (C) Committee Aug. 5, 2019, Meeting Minutes
  Property and Casualty Insurance (C) Committee July 18, 2019, Conference Call Minutes (Attachment One)
  Request for Development of Pet Insurance Model Law (Attachment One-A)
Catastrophe Insurance (C) Working Group Aug. 3, 2019, Meeting Minutes (Attachment Two)
Climate Risk and Resilience (C) Working Group Aug. 3, 2019, Meeting Minutes (Attachment Three)
  Climate Risk and Resilience (C) Working Group July 8, 2019, Conference Call Minutes (Attachment Three-A)
  Climate Risk and Resilience (C) Working Group Apr. 12, 2019, Conference Call Minutes (Attachment Three-B)
Terrorism Insurance Implementation (C) Working Group Aug. 4, 2019, Meeting Minutes (Attachment Four)
Cannabis Insurance White Paper (Attachment Five)
Post-Disaster Claims Guide (Attachment Six)
Alien Insurer Private Flood Data Collection Form (Attachment Seven)
The Property and Casualty Insurance (C) Committee met in Orlando, FL, Aug. 5, 2019. The following Committee members participated: Elizabeth Kelleher Dwyer, Chair, and Matt Gendron (RI); Scott A. White, Vice Chair, and Don Beatty (VA); Jim L. Ridling (AL); Ricardo Lara and Ken Allen (CA); Andrew N. Mais and George Bradner (CT); David Altmaier (FL); Robert H. Muriel (IL); James J. Donelon, Warren Byrd and Tom Travis (LA); Al Redmer Jr. and Robert Baron (MD); Marlene Caride represented by Mark McGill (NJ); John G. Franchini and Anna Krylova (NM); Glen Mulready and Cuc Nguyen (OK); Larry Deiter (SD); Mark Afable (WI); and James A. Dodrill represented by Tonya Gillespie (WV). Also participating were: Lori K. Wing-Heier (AK); Paul Yuen (HI); Travis Grassel (IA); Phil Vigliaturo (MN); Angela Nelson (MO); Martha Lees (NY); Jessica Altman (PA); Todd E. Kiser (UT); and Eric Slavich (WA).

1. **Adopted its July 18 Minutes**

The Committee met July 18 and took the following action: 1) adopted its Spring National Meeting minutes; 2) adopted a Request for NAIC Model Law Development related to pet insurance; 3) heard an update on the status of the private passenger auto report; and 4) discussed private flood data collection, including exposure of a blanks proposal through Sept. 1.

Commissioner Altmaier made a motion, seconded by Director Dieter, to adopt the Committee’s July 18 minutes (Attachment One). The motion passed unanimously.

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

   a. **Casualty Actuarial and Statistical (C) Task Force**

   Mr. Vigliaturo said the Casualty Actuarial and Statistical (C) Task Force met Aug. 3. The Task Force is working on its charge to “[d]raft and propose changes to the Product Filing Review Handbook to include best practices for review of predictive models and analytics filed by insurers to justify rates” and “[d]raft and propose state guidance (e.g., information, data) for rate filings that are based on complex predictive models.” The Task Force has drafted a predictive analytics white paper and has publicly exposed the main body of the white paper twice. An ad hoc group is reviewing comments received on the second draft, and it will respond to them in September and likely release a third version for comment. In addition, two new sections of the paper were exposed during the Task Force meeting.

   Mr. Vigliaturo also said the Casualty Actuarial Society (CAS) and Society of Actuaries (SOA) sent a proposal for tracking continuing education (CE) for appointed actuaries. The Casualty Actuarial and Statistical (C) Task Force was asked to review the proposal and provide feedback to the CAS/SOA Task Force with comments and any suggested modifications. The Casualty Actuarial and Statistical (C) Task Force received three comment letters. The American Academy of Actuaries (Academy) said it was planning on sending a comment letter, but it was unable to due to the unavailability of one of its key members. Another individual who is active with the Academy asked if he could include his letter (and that of another individual) as part of the response to the CAS/SOA Task Force. Mr. Vigliaturo said a motion was made and passed to direct the CAS/SOA Task Force to implement the proposed CE process with consideration given to the comment letters and the discussion at the Casualty Actuarial and Statistical (C) Task Force meeting.

   b. **Surplus Lines (C) Task Force**

   Mr. Travis said the Surplus Lines (C) Task Force met Aug. 3. The Task Force heard an update on a referral to the Producer Licensing (D) Task Force regarding proposed changes to address the underlying licensure to accommodate the newly adopted Guideline on Nonadmitted Accident and Health Coverages (#1860) within the State Licensing Handbook. He reported that 155 alien insurers that write business in the U.S. will be required to file a newly adopted flood supplement to begin collection of flood data for use by the NAIC International Insurers Department (IID). He said the Task Force exposed a new blanks proposal that would aid state insurance regulators by providing them “Home State” direct premiums written. The purpose for the collection of this data would be to provide the states with needed data to ensure that all surplus lines premium tax has been collected. Mr. Travis also noted that several revisions were made to the IID Plan of Operation.
c. **Title Insurance (C) Task Force**

Mr. Byrd said the Title Insurance (C) Task Force met Aug. 4 where it exposed its 2020 proposed charges and heard several presentations. He said presentations were heard from CertifID on wire transfer fraud and from the American Land Title Association (ALTA) regarding their updated Homebuyer Outreach Program. ALTA showcased the results of their market research survey conducted to better understand how to educate consumers regarding title insurance, including information on owner’s policies and a consumer alert on wire transfer fraud. The final presentation to the Task Force came from First American and Old Republic regarding how title insurers might consider integrating blockchain technology into their business models.

d. **Workers’ Compensation (C) Task Force**

Superintendent Franchini said the Workers’ Compensation (C) Task Force met Aug. 5. The Task Force is monitoring the work of the NAIC/IAIABC Joint Working Group, including the drafting of a paper regarding the changing relationships in the work force. It is anticipated that the white paper will be complete prior to the Fall National Meeting. The Task Force also heard from a startup company that is providing workers’ compensation insurance to small businesses.

e. **Cannabis Insurance (C) Working Group**

Commissioner Lara said the Cannabis Insurance (C) Working Group held interim conference calls in order to expose the white paper, *Understanding the Market for Cannabis Insurance*. The Working Group discussed comments and adopted the white paper on July 9. The Working Group also met to discuss proposed charges for 2020 that include collecting aggregated insurance availability and coverage gap information related to the cannabis industry and sharing the findings in a report to be released by the end of 2021.

f. **Catastrophe Insurance (C) Working Group**

Commissioner Altmaier said the Catastrophe Insurance (C) Working Group met Aug. 3. The Working Group has formed a drafting group to create a paper documenting considerations for state insurance regulators in facilitating the growth of a private flood insurance market. The Working Group is reviewing comments received, and it will issue a new draft and finalize the document prior to the Fall National Meeting. Commissioner Altmaier said the Working Group has also formed a drafting group to update the NAIC *State Disaster Response Plan*.

g. **Climate Risk and Resilience (C) Working Group**

Commissioner Lara said the Climate Risk and Resilience (C) Working Group met Aug. 3 to hear about California’s coverage issues related to recent wildfires and its collaboration with the United Nations (UN) Environment Programme to create a sustainable insurance strategy that can address rising sea levels, extreme heat, and wildfires. The Working Group also learned that the *NAIC Climate Risk Disclosure Survey* was sent out to over 1,000 insurers with responses due Aug. 31.

Commissioner Lara said the Working Group heard a presentation from One Concern and American Family Insurance about a One Concern tool that uses artificial intelligence (AI) in models to build resilience in the face of natural disasters. The Working Group will meet in the future to discuss the potential development of a legislative wildfire toolkit.

h. **Lender-Placed Insurance Model Act (C) Working Group**

Commissioner Altmaier said the Lender-Placed Insurance Model Act (C) Working Group has not met since the Spring National Meeting, but it hopes to meet via conference call to discuss a new draft of the Real Property Lender-Placed Insurance Model Act.

i. **Pet Insurance (C) Working Group**

Mr. Beatty said the Pet Insurance (C) Working Group held interim conference calls to discuss the white paper, *A Regulator’s Guide to Pet Insurance*, and the scope of the Working Group, including the possibility of developing a model law for pet insurance. He said the Working Group decided to draft referrals to recommend to the Blanks (E) Working Group to add a line of business in the Financial Annual Statement for pet insurance and to the appropriate Market Conduct and Consumer Affairs (D) Committee group to recommend the collection of complaint data through the Market Conduct Annual Statement (MCAS). The Pet Insurance (C) Working Group also adopted a Request for NAIC Model Law Development for pet insurance that would
define a regulatory structure related to pet insurance, including issues such as producer licensing, policy terms, coverages, claims handling, premium taxes, disclosures, arbitration and preexisting conditions.

j. Terrorism Insurance Implementation (C) Working Group

Ms. Lees said the Terrorism Insurance Implementation (C) Working Group met Aug. 4. The Working Group heard updates on congressional hearings related to the federal Terrorism Risk Insurance Act (TRIA), which expires Dec. 31, 2020, including a U.S. House of Representatives (House) roundtable attended by Director Chlora Lindley-Myers (MO). The Working Group heard from Aon on its views regarding reauthorization, including data showing improvements in take-up rates and average rates for terrorism coverage. The Working Group heard an update on the joint state insurance regulator/U.S. Department of the Treasury (Treasury Department) data call and the State Supplement. The Working Group also heard a presentation from NAIC staff on the analysis of some of the data such as take-up rates, average premium rates, and percentages of premium allocated to terrorism risk.

k. Transparency and Readability of Consumer Information (C) Working Group

Ms. Nelson said the Transparency and Readability of Consumer Information (C) Working Group held interim conference calls to finalize the “Post-Disaster Claims Guide” that is meant to provide information to consumers on how to understand the claims process.

Commissioner Altmaier made a motion, seconded by Director Dieter, 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; the Terrorism Insurance Implementation (C) Working Group (Attachment Four); and the Transparency and Readability of Consumer Information (C) Working Group. The motion passed unanimously.

3. Adopted a Cannabis Insurance White Paper

Commissioner Lara said the Cannabis Insurance (C) Working Group drafted a white paper because more states continue to legalize cannabis, and the need and demand for cannabis insurance is increasing. He said the white paper findings show that there are substantial gaps in insurance coverage for the cannabis industry, exposing those who engage with the cannabis industry. The white paper also explores other regulatory issues related to insurance issues in the cannabis industry, including how insurance rates are set; legal and regulatory authority at the federal, state and local levels; cannabis operations; and best practices.

Commissioner Lara noted that the white paper provides a good foundation on legislation pertinent to the space, but due to the fast-moving nature of legislation in this area, some discussion may not reflect the latest activities. Superintendent Dwyer said the white paper does not federal legislation, such as the Secure and Fair Enforcement (SAFE) Banking Act, that would provide a safe harbor from violations of federal law for financial institutions, including insurers, that provide financial services to cannabis-related businesses that are permissible under state law. She said new legislation, known as the Clarifying Law Around Insurance Marijuana (CLAIM) Act, would provide specific protections for those engaged in the business of insurance with policyholders that either directly or indirectly participate in cannabis industry activity that is permissible under state law. She said state insurance regulators will continue to discuss these bills through the Government Relations (EX) Leadership Council.

Commissioner Lara made a motion, seconded by Commissioner Ridling, to adopt the cannabis insurance white paper, Regulatory Guide: Understanding the Market for Cannabis Insurance (Attachment Five). The motion passed unanimously.

4. Adopted the “Post-Disaster Claims Guide”

Ms. Nelson said the Transparency and Readability of Consumer Information (C) Working Group originally received a referral from the Catastrophe Insurance (C) Working Group to create a claims guide for departments of insurance (DOIs) to provide to consumers following a disaster. The claims guide provides information to consumers on several topics, including steps to take following a disaster, reporting an insurance claim, information on additional living expenses, adjusters, calculation of payments, depreciation, fraud, and ways to limit future damage. Ms. Nelson noted that the document will be able to be customized by insurance departments with their own information so it can be used at in-person events and also available on state websites. She said the Missouri Department already used the document following recent tornadoes.
Superintendent Dwyer asked how the document would be made available. Ms. Nelson said the document would be made available on the Working Group’s webpage in an editable form.

Commissioner Mais made a motion, seconded by Commissioner Donelon, to adopt the “Post-Disaster Claims Guide” (Attachment Six). The motion passed unanimously.

5. Adopted the Alien Insurer Private Flood Data Collection Form

Commissioner Donelon said the Surplus Lines (C) Task Force adopted a new Flood Insurance Coverage Supplement for the collection of data from its 155 or so alien insurers doing business in the U.S. He said the new supplement collects both residential and commercial premium, loss and expense data, along with loss reserve data. In addition, data will be collected on policies in force and the number of claims reported. The data will be collected beginning with year-end 2019. Commissioner Donelon also noted that beginning year-end 2020, the form will add the following two new elements: 1) breakout of first dollar and excess; and 2) policy count at the beginning and end of the year. He also said the purpose for the collection of this alien data by the IID is to assess risk within those insurers on the Quarterly Listing of Alien Insurers that write business in the U.S.

Superintendent Dwyer said the alien surplus lines market is a vital part of the overall private flood insurance market, and understanding their size and growth will be crucial as state insurance regulators look to make blanks changes for admitted companies and understand the scope of the entire private flood insurance market.

Commissioner Donelon made a motion, seconded by Commissioner Altmaier, to adopt the Alien Insurer Private Flood Data Collection Form (Attachment Seven). The motion passed unanimously.

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

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

7. Heard a Presentation on Underinsured Issues

Amy Bach (United Policyholders) said United Policyholders assists consumers with insurance information after disasters. She is looking to improve the post-disaster landscape and look at how much costs are being picked up by private insurance. She said the work in developing the private flood insurance market is very important, as only 5 million Americans have National Flood Insurance Program (NFIP) policies.

Ms. Bach said she hopes a conversation can start in looking for solutions to protecting citizens from natural disaster risks. She said the majority of U.S. homes are underinsured. Many have insured values that are too low to cover reconstruction costs in the event of a total loss. Ms. Bach said many perils are subject to high deductibles, and the majority of homes are not protected for flooding or earthquake. She said this has had a substantially negative impact on local, state and federal governments and disaster-impacted communities.

Ms. Bach said co-insurance clauses are supposed to prevent underinsurance, but they are not doing that currently with respect to California wildfires. She said if it were not for mortgage requirements to buy home and flood insurance, there would be far more uninsured homes. She said banks are not interested in mandating earthquake or flood insurance in lower risk areas. She said all-risk policies are increasingly less common, while named-peril polices are more common. She said replacement cost value (RCV) has replaced actual cash value (ACV) as the norm, but excluded perils, depreciation and deductibles thwart the goal of affordable policies.

Ms. Bach said insurer ads and agents induce consumer reliance that the policy will restore the home to pre-loss condition, but policy conditions and chronic inadequate limits render that reliance misplaced. She said solutions that have been attempted to close the protection gap include disclosures, public education, mandatory coverage, regulations requiring accurate estimating at point of sale, and mandated minimum and extended coverages. She said California has a law requiring that insurers conduct a complete calculation on what it would cost to rebuild a house. She said one thing not tried is making the insurer legally accountable for insuring the dwelling to value unless the property owner expressly declines it.

Ms. Bach said more than half of U.S. homes are insured below their RCV. Reasons include cost considerations and misplaced trust regarding adequacy of coverage and agents, and insurers not held accountable if underinsured. She said we do not know
if full coverage is affordable for all or if it means the same thing to all people. She said extended replacement coverages are more available. These coverages allow an individual to buy a kicker that gives extra coverage if needed.

Ms. Bach said United Policyholders surveys individuals after catastrophes to see if they were properly insured, and around two-thirds normally say they were not properly insured to rebuild their home. She said policy limits are often below the cost to rebuild, and extended replacement coverage endorsements and inflation adjustment formulae are not sufficient to cover rebuilding. She said protection gaps occur because some policies only pay ACV on roofs over ten years old. High deductibles and unexpected exclusions or limitations also contribute to the protection gap.

Ms. Bach said higher deductibles contribute to the underinsured problem because they shift risk back to property owners, taxpayers and charitable resources. She said insurers and reinsurers use higher deductibles to limit their exposure, but high deductibles deter non-mandatory buying. She noted that lower deductibles have helped the California Earthquake Authority (CEA) sell more earthquake policies. She said high deductibles also contribute to the assignment of benefits problem because the policyholder gets a second opinion from contractors looking for a different answer.

Ms. Bach said considerations to address underinsurance include the possibility of waiving deductibles on total or catastrophe losses, whether insurers should be required to explain deductible math in writing pre-sale, and to what extent the trend is deterring the purchase of insurance and putting heavier burdens on the Federal Emergency Management Agency (FEMA), governments and taxpayers. She said affordability and availability have to be balanced with the cost and coverage realities of insurers. She said mandated full coverage does not work if the cost is not affordable.

Ms. Bach said a “clarity law” regarding pricing seems to have helped home insurance affordability in Alabama. She said surplus lines insurers are picking up more and more risks, which has pros and cons. She said realtors, community, and grass roots groups are fighting escalating home and flood premiums. She said society has to avoid jeopardizing home ownership for people who have lived in a risky area for many years. She questioned whether a financial assistance program for people who cannot afford insurance might be viable.

Ms. Bach said we cannot control weather, force for-profit companies to insure risks that will jeopardize their solvency, or force property owners to make improvements they cannot afford to make. However, she noted that society can prevent panic-based mass non-renewals, reject excessive rate increases and policy forms with overly broad exclusions, restore consumers’ trust in the value of property insurance, and facilitate home hardening and risk reduction. She said state insurance regulators have to consider whether full insurance and affordable home insurance are mutually exclusive and whether state legislation might affect affordability and availability of home insurance in the face of climate change, modeling, drones, data mining, and increased consumer mistrust of insurers.

Ms. Bach said existing government programs need to be explored to see if they can be a model for providing essential protection affordably. She said parametric products that cover deductibles may be better than nothing. She said creating a floor by legislatively requiring minimum home insurance coverage protects the insurance system and still allows for competition on enhancements. She said insurers should be able to voluntarily innovate to simplify policies and claim practices to better meet consumers’ expectations, restore public confidence, and reduce government engagement in the business of insurance. She said insurers should be encouraged to voluntarily engage in supporting and rewarding mitigation and risk reduction investments in place of high deductibles.

Superintendent Dwyer said she would like industry representatives to present on these same underinsurance issues during the Fall National Meeting in order to outline solutions they might have. She asked about a California statute requiring insurers to conduct a complete calculation on what it would cost to rebuild a house. Ms. Bach said the estimate is required, but it is not known if it has had any effect. Commissioner Lara said the department is working with the legislature in looking at community wide mitigation standards.

Superintendent Dwyer said insurers often automatically increase the amount of insurance, and this is probably through a software tool. Ms. Bach said some insurers do a better job than others on this, and only a handful of insurers look critically at the software. She said a diligent agent might override what the software recommends. Superintendent Dwyer asked if the software is good enough or needs to be overridden. Ms. Bach agreed that it often needs to be overridden.

Superintendent Dwyer said a parametric product is intriguing when it can help with a hurricane deductible. Ms. Bach said a parametric product can be beneficial in non-catastrophe losses, such as with earthquakes. She said parametric insurance is not necessarily great for core coverages, but it can be helpful in providing assistance in having some coverage instead of nothing.
Superintendent Dwyer said parametric insurance can be helpful when combining it with other coverage. Ms. Bach said sometimes a parametric product will give a policyholder something to at least get a roof back over one’s head.

Director Wing-Heier said underinsurance is not always about the limits but what is excluded from the coverage, such as septic tanks or other exclusions. She said condo associations often might be underinsured. Ms. Bach said there used to be a lot of valued policy states where at least a person knew what they were getting, but now policies are very complicated. She would like to see dialogue include how society can innovate to make sure people can buy essential coverage for their assets.

Commissioner Ridling said underinsurance is an issue, and insurers are constantly trying to keep homeowners at the proper value to replace their home. He said there is still a misconception with consumers about replacement cost and the value of their home, and people frequently do not understand RCV and what is needed to rebuild their home. Superintendent Dwyer said sometimes citizens complain that the insurer is wanting the insured value to be too high.

Mr. Byrd said inflation guard raises limits, and he asked whether this is calculated into Ms. Bach’s numbers of underinsurance. She said surveys show that people believe they are underinsured after catastrophes. She said most policies are sold with inflation guards. She said extended replacement coverage provisions have not been working, as homeowners are still underinsured with these provisions even when it is a new policy. She emphasized that this phenomenon occurs with total losses.

Commissioner Lara said there is no authority to mandate more accurate coverages, but he wondered how consumers could be educated to obtain better limits. Ms. Bach said amounts probably cannot be required, and it is on the insurer to accurately project the RCV of the property. She said the next step would be for the legislature to say it is the insurer’s obligation to recommend the proper coverage, but that affects cost. She said if an insurer guesses wrong, they have to make up for it; and if and insured does not want the full coverage, it would be on them.

Superintendent Franchini asked about lenders. Ms. Bach said lenders usually require coverage in the amount of the loan. She said she wonders why lenders have not required earthquake insurance when the property is on fault line. Superintendent Franchini asked about the difference in conditions policies and having all perils policies. Ms. Bach said she thinks a discussion should be held about all perils policies.

Superintendent Dwyer asked the Transparency and Readability of Consumer Information (C) Working Group to look at the disclosures education issue.

8. **Heard a Presentation on Bundling Noninsurance Products**

Birny Birnbaum (Center for Economic Justice—CEJ) discussed two recent court opinions in travel insurance litigation that appear to challenge state insurance regulators’ authority to oversee insurance and raise issues about protection packages that combine insurance and noninsurance products and services. He said the cases deal with cruise lines with travel protection policies. He said consumers that bought the product challenged the travel company on the basis of the sale of the travel insurance portion of the travel protection plan. The travel protection included insurance but also noninsurance services and products. The lawsuit was against the cruise company that was also a limited lines travel producer. The cruise line asked the court to compel arbitration because the consumer purchased a ticket that had a broad arbitration provision that the cruise line argued extended to the travel protection plan, including the travel insurance portion of the plan.

Mr. Birnbaum said he submitted a declaration in the case pointing out that the decision would usurp state-based regulation by conflicting with the McCarran-Ferguson Act, and it would undermine state public policy, as the insurance plan was approved by the state DOI and did not contain a pre-dispute mandatory arbitration provision. He said these cases are important for the future of state-based insurance regulation beyond travel protection packages as more noninsurance products and services are packaged with insurance into a protection package.

Superintendent Dwyer said she read the cases, and she did not see a separate discussion in the decision on the issue regarding the McCarran-Ferguson Act and insurance. Mr. Birnbaum said the opinions were brief, finding the arbitration agreement to be broad and covering the entire travel protection plan without discussion of the McCarron-Ferguson Act or states-based insurance regulation.

9. **Announced NAIC-Accepted Actuarial Designations**

Superintendent Dwyer reported that the Casualty Actuarial and Statistical (C) Task Force had a charge in 2014 to review the SOA new property and casualty actuarial educational track. The aim was to determine if the actuarial examination syllabi in
the SOA’s “general insurance” (GI) track would sufficiently educate an actuary to be a U.S. Appointed Actuary. She noted that the role of the Appointed Actuary is important to state insurance regulators because these actuaries opine on the reasonability of reserves in the financial statement, which is the largest component of a property/casualty (P/C) insurer’s balance sheet.

Superintendent Dwyer said, in 2015, the Casualty Actuarial and Statistical (C) Task Force asked the Property and Casualty Insurance (C) Committee to recommend that the NAIC hire a consultant to conduct a review of the SOA’s P/C, or GI, actuarial educational track. The Committee agreed and asked the Executive (EX) Committee to conduct the study. The Executive (EX) Committee reviewed the request, hired a consultant, and assigned an ad hoc group of commissioners to oversee the project.

The NAIC released the results of the consultant’s work in July 2017, finding that: 1) the SOA GI track was found to lack the necessary breadth and depth to be accepted; and 2) for fairness, the consultant was also asked to review the CAS actuarial education for P/C Actuaries. CAS membership was found acceptable, with some question about the associateship level and whether the advanced reserving on Exam 7 should be required in addition to the Associate of the Casualty Actuarial Society (ACAS) designation.

Superintendent Dwyer said the SOA asked the Executive (EX) Committee what it needed to change so its educational track would be acceptable to state insurance regulators. Because there were now competing actuarial organizations vying to attract the same candidates, the Executive (EX) Committee decided that it should objectively define the minimum educational standards expected for Appointed Actuaries to produce a reliable actuarial opinion for our statutory P/C financial statements.

Superintendent Dwyer said the next step was to hire a consultant to conduct a P/C Appointed Actuary Job Analysis (Job Analysis) to identify what an Appointed Actuary needs to know and do to successfully and reliably perform the Appointed Actuary job. The Job Analysis was completed by the NAIC and numerous subject matter experts (SMEs) nominated by all three of the largest actuarial organizations in the U.S.—the CAS, the SOA and the Academy). Using the Job Analysis, NAIC staff worked with SMEs in what was called the NAIC’s P/C Educational Standards and Assessment Project. The first deliverable in this project was the documentation of which elements in the Job Analysis should be included in basic education as a minimum standard, with the remaining elements achievable through experience or CE. The second deliverable is the assessment of the CAS and SOA syllabi against the newly created minimum educational standards. The NAIC and numerous volunteer SMEs assessed the CAS and SOA syllabi and reading materials.

On May 31, 2019, the NAIC finalized the assessments of the CAS and SOA. With mutual agreement to make a few additional changes to the syllabi in addition to the significant changes already made by the SOA, the following designations with particular exam requirements were recommended to be accepted by the NAIC:

- Fellow of the Casualty Actuarial Society (FCAS) with successful completion of Exam 6-US, which is the U.S. statutory accounting and regulation exam.
- ACAS with successful completion of Exam 6-US and Exam 7, which provides advanced reserving.
- Fellow of the Society of Actuaries (FSA) with successful completion of the general insurance track, including the Financial and Regulatory Environment-U.S. Exam and the Advanced Topics in General Insurance Exam.

Superintendent Dwyer thanked the CAS and SOA for finding SMEs to conduct the projects along the way, as well as their commitment to providing Appointed Actuaries with quality education upon whom state insurance regulators can rely to conduct the important actuarial opinions for insurers.

Having no further business, the Property and Casualty Insurance (C) Committee adjourned.
The Property and Casualty Insurance (C) Committee met via conference call July 18, 2019. The following Committee members participated: Elizabeth Kelleher Dwyer, Chair (RI); Scott A. White, Vice Chair (VA); Jim L. Ridling represented by Jerry Workman (AL); Ricardo Lara represented by Kendra Zoller (CA); Andrew N. Mais (CT); David Altmaier (FL); Robert H. Muriel represented by Judy Mottar (IL); James J. Donelon (LA); Marlene Caride represented by Mark McGill and Carl Sornson (NJ); John G. Franchini represented by Anna Krylova (NM); Glen Mulready (OK); Larry Deiter (SD); and James A. Dodrill represented by Jamie Taylor (WV).

1. **Adopted its Spring National Meeting Minutes**

Director Deiter made a motion, seconded by Commissioner Donelon, to adopt the Committee’s April 8 minutes (see NAIC Proceedings – Spring 2019, Property and Casualty Insurance (C) Committee). The motion passed unanimously.

Superintendent Dwyer noted that the Committee also met July 10 via conference call in regulator-to-regulator session, pursuant to paragraph 8 (consideration of strategic planning issues) of the NAIC Policy Statement on Open Meetings.

2. **Adopted a Request for NAIC Model Law Development Related to Pet Insurance**

Ms. Zoller said the Pet Insurance (C) Working Group met May 14 via conference call to review the pet insurance white paper, “A Regulator’s Guide to Pet Insurance.” As part of that review, many of the members and interested parties expressed an interest in opening a model law to address issues, such as producer licensing, disclosures and preexisting conditions. Ms. Zoller said the Working Group took formal comments on opening a model and discussed those comments during a June 27 conference call. The Working Group voted to adopt the Request for NAIC Model Law Development with Washington voting against it, as it felt data should be collected before drafting a model. Ms. Zoller said the Request for NAIC Model Law Development explains that a model law on pet insurance would likely include issues, such as producer licensing, policy terms, coverages, claims handling, premium taxes, disclosures, arbitration and preexisting conditions. The Working Group also decided to make referrals to the appropriate groups to request that Market Conduct Annual Statement (MCAS) data and Financial Annual Statement data be collected to better understand the size, growth and players within the emerging private flood insurance market.

Ms. Zoller made a motion, seconded by Commissioner Donelon, to adopt the Request for NAIC Model Law Development regarding pet insurance (Attachment One-A). The motion passed unanimously.

3. **Heard an Update on the Private Passenger Auto Study**

Superintendent Dwyer said state insurance regulators have been reviewing a draft private passenger auto study that used ZIP code-level private passenger auto data received from statistical agents in 2018 to analyze premiums and losses. She said the states have also been given access to a Tableau tool that allows state insurance regulators to review private passenger auto data at a ZIP code-level and compare it to certain demographic information. She noted that, because the data in the current study and Tableau tool was for the years 2013, 2014 and 2015, she has requested, on behalf of the Committee, that statistical agents provide 2016 and 2017 data. That data is expected to be received on July 22. Superintendent Dwyer said the Committee will update the study with the new data.

4. **Discussed Private Flood Data Collection**

Superintendent Dwyer said the Committee has previously discussed deficiencies with the private flood data collected through the Annual Statement, including the fact that the data is not split between residential and commercial. She said a draft template of a new exhibit has been distributed that splits residential private flood data from commercial; and for residential private flood data, it includes standalone first dollar, standalone excess, endorsement first dollar, and endorsement excess. The exhibit will include premiums, losses, number of policies and claims (open and closed), and number of policies in a special flood hazard area. In addition, draft revisions to the Credit Insurance Experience Exhibit have been proposed in order to collect data concerning lender-placed flood policies.
Superintendent Dwyer noted that a recommendation from Birny Birnbaum (Center for Economic Justice—CEJ) was distributed that suggests revising the State Page to add residential private flood as a line and add number of exposures for the private flood categories, as well as for some other lines, such as homeowners and auto.

Commissioner Donelon asked if there were any objections to collecting additional private flood data. Superintendent Dwyer said no objections had been noted, but the proposal will be submitted for formal comment. Amy Bach (United Policyholders) said she supported Mr. Birnbaum’s proposal. David F. Snyder (American Property Casualty Insurance Association—APCIA) said he would like an opportunity to share the proposal with member companies and get a sense of whether there are more effective and efficient ways to obtain the data. He also noted that private flood data will be collected through the MCAS, and he wondered if collecting private flood data in another manner is warranted. He said all parties want the private market to be as involved as possible in writing flood insurance, and there is a concern that companies could be overburdened by data collection and not want to write the business. Mr. Birnbaum said MCAS data comes in a year later than Annual Statement data, and the data elements are different for MCAS because they focus on consumer outcomes.

Lisa Brown (APCIA) said Mr. Birnbaum had previously recommended that MCAS data on private flood be reported by alien surplus lines insurers. She asked whether this recommendation proposed that alien surplus lines companies report MCAS data or whether the International Insurers Department (IID) collect data similar to MCAS data from alien surplus lines insurers. Mr. Birnbaum said most private flood insurance is being written by surplus lines insurers. He said the Surplus Lines (C) Working Group recently exposed a data collection exhibit for private flood insurers. He said the Working Group adopted the proposal, but it declined to add MCAS data because it was beyond the scope of what is normally collected. He noted that the current MCAS process excludes surplus lines experience, so he would like to see data similar to MCAS be collected through the IID.

Commissioner Donelon made a motion, seconded by Commissioner White, to expose the proposed Annual Statement revisions relating to private flood insurance through Sept. 1.

Superintendent Dwyer said, because a change to the Annual Statement would not be in effect until 2021, collecting 2020 data, she and other commissioners believe a data call would be beneficial in order to collect 2018 and 2019 data. Commissioner Donelon said he would not want companies to report one way on the Financial Annual Statement, then another way through a data call, and yet another way once Annual Statement changes go into effect. Superintendent Dwyer said she agreed and would want a data call to be consistent with the way the Annual Statement data will be in the future.

Mr. Birnbaum said private flood data is currently being collected on the State Page, but a data call could just ask companies to break out private flood insurance between commercial and residential coverage. Superintendent Dwyer said she would like to obtain data consistent with how the Blank will look when revised. Mr. Birnbaum said asking for another level of detail does not make a data call inconsistent with what was previously reported.

Superintendent Dwyer said a proposal for a data call will be distributed and could be discussed at the Summer National Meeting.

5. **Discussed the Summer National Meeting**

Superintendent Dwyer said the Committee will possibly have several items up for adoption at the Summer National Meeting, including a cannabis insurance white paper, a document that includes private flood considerations for encouraging the private market, and a post-disaster claims guide. She said the Committee will also hear a presentation from Ms. Bach on the issue of underinsurance, and she hopes this presentation will be the beginning of a more in-depth conversation. She would like to hear proposed solutions from the industry about underinsurance.

Having no further business, the Property and Casualty Insurance (C) Committee adjourned.
REQUEST FOR NAIC MODEL LAW DEVELOPMENT

This form is intended to gather information to support the development of a new model law or amendment to an existing model law. Prior to development of a new or amended model law, approval of the respective Parent Committee and the NAIC’s Executive Committee is required. The NAIC’s Executive Committee will consider whether the request fits the criteria for model law development. Please complete all questions and provide as much detail as necessary to help in this determination.

Please check whether this is: ☒ New Model Law or ☐ Amendment to Existing Model

1. Name of group to be responsible for drafting the model:
   Pet Insurance (C) Working Group

2. NAIC staff support contact information:
   Aaron Brandenburg
   abrandenburg@naic.org
   816 783 8271

3. Please provide a brief description of the proposed new model or the amendment(s) to the existing model. If you are proposing a new model, please also provide a proposed title. If an existing model law, please provide the title, attach a current version to this form and reference the section(s) proposed to be amended.
   Pet Insurance Model Law. This model would define a regulatory structure related to pet insurance, including issues such as producer licensing, policy terms, coverages, claims handling, premium taxes, disclosures, arbitration, and preexisting conditions.

4. Does the model law meet the Model Law Criteria? ☒ Yes or ☐ No (Check one)
   (If answering no to any of these questions, please reevaluate charge and proceed accordingly to address issues).
   a. Does the subject of the model law necessitate a national standard and require uniformity amongst all states? ☒ Yes or ☐ No (Check one)
      If yes, please explain why – Interested parties agree that there is ambiguity within regulation of the pet insurance market and having a more defined and consistent regulatory structure will improve the market and benefit consumers. The NAIC White Paper, A Regulators’ Guide to Pet Insurance, the Pet Insurance (C) Working Group and the Producer Licensing (D) Task Force have previously discussed some of these ambiguities in the regulation of the market.
   b. Does Committee believe NAIC members should devote significant regulator and Association resources to educate, communicate and support this model law?
      ☒ Yes or ☐ No (Check one)

5. What is the likelihood that your Committee will be able to draft and adopt the model law within one year from the date of Executive Committee approval?
6. What is the likelihood that a minimum two-thirds majority of NAIC members would ultimately vote to adopt the proposed model law?

☐ 1  ☒ 2  ☐ 3  ☐ 4  ☐ 5  (Check one)

High Likelihood  Low Likelihood

Explanation, if necessary:

7. What is the likelihood that state legislatures will adopt the model law in a uniform manner within three years of adoption by the NAIC?

☐ 1  ☒ 2  ☐ 3  ☐ 4  ☐ 5  (Check one)

High Likelihood  Low Likelihood

Explanation, if necessary:

8. Is this model law referenced in the NAIC Accreditation Standards? If so, does the standard require the model law to be adopted in a substantially similar manner?

No

9. Is this model law in response to or impacted by federal laws or regulations? If yes, please explain.

No
Catastrophe Insurance (C) Working Group
New York, New York
August 3, 2019

The Catastrophe Insurance (C) Working Group of the Property and Casualty Insurance (C) Committee met in New York, NY, Aug. 3, 2019. The following Working Group members participated: Mike Chaney, Chair (MS); David Altmaier, Vice Chair, represented by Susanne Murphy (FL); Jerry Workman (AL); Joanne Bennett (AK); Ken Allen (CA); Peg Brown (CO); George Bradner (CT); Kathleen Nakasone (HI); Judy Mottar (IL); Barb Rankin (KS); Warren Byrd (LA); Kevin Beagan (MA); Paula Keen (MD); Angela Nelson (MO); Fred Fuller (NC); Mark McGill (NJ); Tom Botsko (OH); Cuc Nguyen (OK); Elizabeth Kelleher Dwyer and Beth Vollucci (RI); Lee Hill and Gwen Fuller McGriff (SC); Mark Worman (TX); and John Haworth (WA). Also participating was: Rebecca Nichols (VA).

1. **Adopted its 2019 Spring National Meeting Minutes**

Ms. Murphy made a motion, seconded by Ms. Nelson, to adopt the Working Group’s April 6 minutes (see NAIC Proceedings – Spring 2019, Property and Casualty Insurance (C) Committee, Attachment Two). The motion passed unanimously.

2. **Heard an Update Regarding Federal Legislation and the NFIP**

Brooke Stringer (NAIC) provided an update regarding federal legislation and the National Flood Insurance Program (NFIP). The NFIP has been operating on a series of short-term extensions since its reauthorization expired in 2017. The latest NFIP extension expires Sept. 30. It is likely that there will be another temporary extension. However, the NAIC was pleased to see some positive momentum with the U.S. House of Representatives (House) Committee on Financial Services unanimously approving a five-year reauthorization bill (H.R. 3167) in June.

The NAIC appreciates Chairwoman Maxine Waters and Ranking Member Patrick McHenry’s bill, which included some provisions from the NAIC guiding principles for reauthorization. The bill includes ensuring that consumers can leave and return to the NFIP without penalty and receive pro-rata refunds when they cancel an NFIP policy midterm to switch to a private policy. The NAIC was also encouraged by the bill’s increased investment in mitigation, including the authorization of $200 million for pre-disaster hazard mitigation funding. The proposed flood mapping modernization reforms would also be beneficial.

Some of the other provisions in the bill include: 1) a five-year demonstration program for means-tested assistance to low-income policyholders; 2) a repeal of the $25 policy surcharge for primary residences and $250 surcharge for businesses and nonprimary residences; 3) the creation of a revolving loan fund for the states for mitigation efforts; and 4) a requirement for the Federal Emergency Management Agency (FEMA) to update mapping technology, among other provisions.

Since the June Committee passage of Chairwoman Waters’ bill, the Louisiana and New Jersey delegations have introduced an alternative bill (H.R. 3872/S. 2187), as they believe the legislation did not go far enough to protect consumers from rate hikes or do enough to improve the claims process. This development complicates quick action in the House as they consider these alternative reforms.

While the bills have many similarities, Representative Frank Pallone/Senator Bob Menendez’s legislation would: 1) cap annual rate increases at 9%, as opposed to the current cap of 25%; 2) increase coverage limits from $250,000 to $500,000 for residential properties; 3) establish caps on Write Your Own Company Compensation/agent commission; 4) freeze the NFIP’s interest payments on its debt; 5) require annual continuing education (CE) for agents; 6) implement numerous claims processing reforms—i.e., litigation oversight reforms—prohibiting engineering reports from being manipulated; and 7) includes no provisions for private flood insurance. Some of these reforms may be incorporated in Chairwoman Waters’ bill.

Senator Roger Wicker has introduced three flood related bills that would: 1) deliver relief for small businesses by allowing surcharges to be used for mitigation; 2) empower local communities to take an active role in flood mapping; and 3) provide CE requirements for agents to ensure that accurate information about flood policies is being presented to consumers.
As the U.S. Congress (Congress) considers reauthorization and reform bills, the NAIC will keep the Working Group updated on any developments. The NAIC continues to urge Congress to find consensus on a long-term reauthorization.

On July 1, the federal banking regulators’ rule supporting lender acceptance of private flood insurance policies went into effect. The rule requires insurers to self-certify that their private flood policies meet certain requirements set forth in the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters) in order for banks to be required to accept such policies, and it also allows banks the discretion to accept policies that do not meet these requirements. The NAIC hopes that the implementation of this rule after many years of deliberation and uncertainty at the federal level will now help encourage banks’ acceptance of private flood policies. As state insurance regulators begin reviewing these new private flood insurance forms that include self-certification language indicating that they meet the federal private flood definition, the NAIC wants to hear from state insurance regulators about their experience regarding items such as the specific language state insurance regulators are approving, challenges encountered by state insurance regulators, as well as challenges with banks or inquiries from banks.

Mr. Bradner said he recently attended an event sponsored by FEMA. During this event, FEMA discussed Risk Rating 2.0. Mr. Bradner said it appears that Risk Rating 2.0 will eliminate some of the cross-subsidization. He said one of his concerns is the pricing impacts to consumers. He said these increases could be significant, as first-time buyers of flood insurance would be paying actuarially sound rates. He is also concerned that while scoring the risk, some consumers may pay more than they have paid in the past because risks will be scored at a more granular level. He said this could cause some disruptions regarding mortgages because the increase will be unexpected by the consumer.

Commissioner Chaney said when Biggert-Waters was initially passed, there were consumers on the gulf coast who saw astronomical increases in NFIP policy prices following Hurricane Katrina. Dennis C. Burke (Reinsurance Association of America — RAA) said Risk Rating 2.0 is an administrative action by FEMA, so they are required to abide by existing law, and the existing law has the post-Biggert-Waters glide path regarding rate increases. There is some discussion right now regarding lowering the glide path that is currently in place. Mr. Burke said some Congressional members wanted to lower the glide path, which is currently 18%, to 9%. He said it was true that new policyholders will be paying the full risk rate.

Commissioner Chaney asked Mr. Burke where he saw this glide path affecting long-term rates, as well as how Risk Rating 2.0 will affect affordability. Mr. Burke said the property/casualty (P/C) industry is advocating for continuous coverage. He said if this was in place, the growing private flood insurance market will provide options where Risk Rating 2.0 is problematic. Mr. Bradner said he is still concerned that a consumer leaving the NFIP to obtain insurance in the private market will not be grandfathered back into the NFIP if they choose to return to the NFIP from the private market. He said this would significantly affect the private flood insurance market. Mr. Burke said currently, FEMA interprets the law as not being able to provide grandfathering when coming back to the NFIP, which is why the RAA is advocating for continuous coverage.

3. **Received an Update Regarding the Transparency and Readability of Consumer Information (C) Working Group**

The Transparency and Readability of Consumer Information (C) Working Group received a referral from the Catastrophe Insurance (C) Working Group to create a claims guide for departments of insurance (DOIs) to provide to consumers following a disaster. The claims guide provides information to consumers on several topics. The document includes information regarding: 1) steps to take following a disaster that damaged a consumer’s home; 2) additional living expense; 3) how to report an insurance claim; 4) what an adjuster is, the various types of adjusters, and what they do; 5) items that a consumer will need to provide to the insurance adjuster; 6) settling a claim; 7) how a claim payment is calculated; 8) replacement cost versus actual cash value (ACV); 9) how depreciation works; 10) ordinance and law coverage; 11) the three R’s of recovery; 12) assignment of benefits; 13) insurance fraud; 14) ways to limit future damage; and 15) financial preparation for future events.

The document also includes logs for consumers to use to record claim information, adjuster information, contractor information, claim communication, and emergency repairs. The Working Group will be considering how to put this information onto a website that is readable for consumers.

Ms. Nelson said the *Post-Disaster Claims Document* has been adopted by the Transparency and Readability of Consumer Information (C) Working Group, and it will be considered for adoption by the Property and Casualty Insurance (C) Committee during the Summer National Meeting.
Superintendent Dwyer asked Ms. Nelson if the Missouri Division of Insurance found this document helpful following the tornado in Jefferson City, MO. Ms. Nelson said she spoke to their consumer affairs division following the disaster, and she was told that consumers found the document to be helpful.

4. Adopted its Drafting Group Reports

Ms. Nelson said a drafting group consisting of herself, Mr. Workman, Mr. Bradner and Mr. Byrd has been working on updating the NAIC State Disaster Response Plan. The purpose of the document is to provide a template for a state DOI to use when assisting consumers following a disaster. The document details how a DOI can work with other agencies, including federal, state or local agencies; the NAIC; and other state DOIs. The disaster response plan template provides states needing NAIC assistance following a disaster with high-level action items for a state DOI to do prior to contacting the NAIC, as well as the types of assistance the NAIC can provide to the states.

Mr. Bradner said the document is broken up into several topics, including: 1) preparation steps, as well as important planning considerations following a disaster; 2) important contacts that a DOI should collect on a regular basis; 3) resources required for emergency response; 4) major incident management functions; 5) disaster response teams and their purpose; 6) roles and responsibilities of various staff members following a disaster; 7) example response levels and definitions; and 8) contact templates.

Mr. Bradner said the drafting group would like to send the document to Working Group members and interested state insurance regulators for input. Once the input is received and incorporated, the document can be exposed.

Ms. Nelson made a motion, seconded by Mr. Byrd, to adopt the Working Group’s report.

5. Heard a Presentation from Milliman Regarding the Private Flood Insurance Market

Nancy Watkins (Milliman) said she was going to focus on the issue of regulatory uncertainty as a barrier to private flood insurance. She said in the past three years, the U.S. has experienced heavy rainfall, causing extreme flooding that has never been seen before. Since 2016 there have been several big storms, causing billions of dollars in damages. Between 50% and 80% of these losses are not insured, which means communities are not bouncing back quickly when these storms occur.

Ms. Watkins said floods are now expected to cost U.S. households $20 billion each year, with only 16% of these losses insured by the NFIP. Approximately 3.5 million single family homes are insured by the NFIP; however, there are 82 million single family homes in the U.S. Only 15% of U.S. homeowners had a flood insurance policy in 2018, and the estimated direct written premium for the residential flood insurance market by private insurers is $213 million. Milliman estimates the potential private residential flood insurance market to represent between $34 billion and $48 billion in direct written premium.

Ms. Watkins said she has seen recent comments opposing the private flood insurance market due to cherry picking. She said the NFIP is a temporary solution that was put in place 50 years ago because the private insurance market could not and would not insure flood. She said it does not make sense to prolong the problem so the temporary solution can be saved. She said the NFIP is important. Every state has some type of residual market that helps to insure and provide continuous coverage for people that might not be able to afford the coverage available in the market. Ms. Watkins said to consider Florida citizens. She said that market has grown and shrunk as it needed to and provided a safe and reliable source of insurance for people who need it. The NFIP can continue to evolve and do the same thing. Ms. Watkins said Risk Rating 2.0 is going to help the NFIP and put out a lot of good information on the actual risk of a flood insurance policy. She said this will also protect the NFIP from cherry picking in the future.

Ms. Watkins said Milliman is working for insurers, reinsurers, and managing general agents (MGAs) who are trying to start private flood insurance products in the U.S. Milliman is also working with FEMA to develop Risk Rating 2.0. Milliman is also working with the North Carolina Rate Bureau (NCRB) to develop a private flood product in North Carolina.

Ms. Watkins said Milliman has interviewed state insurance regulators in key states to discuss the approach to regulating private flood insurance. Milliman has researched public sources on property insurance regulation and practices, as well as reviewed private flood insurance rate, rule and form findings. Ms. Watkins said Milliman prepared a 50-state matrix on flood insurance regulation for the National Association of Realtors (NAR). She said Milliman has done a variety of market studies and
publications regarding the impact of private flood insurance. She said in Florida, 72% of homeowners can get rates less than the current NFIP rates.

Ms. Watkins said she has some suggestions regarding the future of private flood insurance. She said she would like to see a private market alongside the NFIP, as they can coexist. She said she believed private flood insurance can be written in the both the admitted and non-admitted market; however, she said it needs to be determined if the guaranty funds are going to cover flood insurance in the admitted market.

Ms. Watkins said there are a lot of excess flood insurance policies in existence. She said it would be beneficial to see first dollar policies with specified limits, first dollar up to full home value, and excess of the NFIP. She believes there are many insurers that are going to want to offer broader options than those provided by the NFIP. She would like to see insurers actively selling private flood insurance. It would be beneficial for more agents and insurers to tell homeowners that they need flood insurance. Improved technology would reduce the cost and streamline the user experience.

Ms. Watkins said she would like to see more affordable risk-based premiums for the greatest number of households, as well as higher participation rates across all flood zones. She said if state insurance regulators embrace some of these options and make them goals for their states, state insurance regulators will see reduced reliance on disaster assistance post-event, as well as communities rebounding more quickly.

Ms. Watkins said she saw a quote that stated that private flood insurance growth was dangerous for consumers. She believes having a small private flood insurance market is a disaster for consumers. She said it is important to balance the need to protect consumers against the need to promote the private flood insurance market. She said most of the larger insurers are not writing a large share of private flood insurance. She said one of the obstacles of large insurers is that flood insurance is hyper localized. She said you can have two different homes in the same neighborhood that have two different risks. She said for a wind policy or a wildfire policy, you might not have the same type of differentiation as with a flood policy. She said insurers need to understand their risk, and they need to charge actuarially sound rates. The localized nature of flood insurance makes it very different from homeowners insurance. Most private insurers have not serviced or written flood insurance policies and do not have access to good data, which is a problem. Severe repetitive losses are also an issue.

Ms. Watkins said currently, Florida is the only state that has specific regulations to private flood insurance. State insurance regulators are trying to work with insurers because the flood insurance market is underserved. However, a lot of times, it is not clear for how long various rules will be suspended; this causes a lot of uncertainty for insurers.

Ms. Watkins said one of the biggest barriers to private flood insurance is the use of catastrophe models. Some states do not allow the use of catastrophe models; they want all property rates to be based on historical experience. Of the three choices—historical experience, rates of a competitor, or catastrophe models for flood—most insurers are going to price and underwrite using catastrophe models.

Florida has specifically in their laws allowed catastrophe laws to be used as a basis for pricing. The data released by the NFIP gives 40 years of paid loss history, starting in 1980, which does provide a lot of data; however, the data alone does not tell the story.

Before 2005, Louisiana represented 12% of the cumulative paid losses for all years for the NFIP. In one year, that 12% grew to 49%. If you are going to use experience in 2006, you would have the possibility of allocating almost half of the NFIP premium to Louisiana because of one event.

In 2011, New Jersey and New York experienced about 3–4% of the total losses. Following Superstorm Sandy, the total loss percentages increased to 11–12%. The same thing happened with Hurricane Harvey in Texas. This reflects the fact that you cannot base rates on experience alone. It is necessary to look at the probability, which is what catastrophe models do. Currently NFIP rates are based on a first-generation catastrophe model built in the 1970s. The model does not provide the amount of differentiation it needs to in order to provide a good job with the rating. It also does not reflect insurance to value, so a $250,000 home pays the same premium as a $1 million home.

Think about those low value homes that are subsidizing the high-value homes. Risk Rating 2.0 will get that subsidy removed. The next generation catastrophe flood models are going to take the historical data available, decompose it, and reassemble it to
make it useful for insurance purposes. If one uses only exposures, they will get only a limited view of risk that is not directly useful for pricing flood insurance. The effects of mitigation can also be used in a catastrophe model.

Florida uses catastrophe models for hurricanes to improve their building codes and provide mitigation credits in the pricing of insurance. Ms. Watkins said this same ability will have to be used for the flood peril catastrophe models. She said catastrophe model use varies greatly by state. She believes the reason state insurance regulators are nervous regarding catastrophe model challenges is that they need to protect their consumers, and they do not have the expertise and the resources to review models comprehensively. She said additionally, not all the states have the ability to protect the proprietary information of catastrophe modelers and insurers, which presents a real challenge because insurers do not know if catastrophe models will be accepted or not. She said insurers will likely stay out of the states that will not allow catastrophe models, which means the states will have fewer options for consumers.

Ms. Watkins said she proposes for the states that want to vet the catastrophe models, that they band together and create a catastrophe model clearing house. She said some states might want to do a simple check list and ask specific questions. She said Milliman would be able to help design something like this. She said a diligent expert review costs money and professionals such as actuaries, hydrologists and others to understand both catastrophe models and flood.

Ms. Watkins said it does not make sense for the states to change their rate and form laws; however, requiring insurers to describe what they did and understand the catastrophe model they are basing their rates on might work for the states. She said New Jersey asks for flood rates, rules and forms to be filed (initial and rate changes), but no supporting information is required.

New entrants to the flood insurance market are likely to purchase significant amounts of reinsurance. Flood insurance is inherently high-risk and volatile, so insurers may require higher amounts of profit and contingencies built into rates than for homeowners; if this is not allowed in a particular state it will be difficult for an insurer to offer private flood insurance. Wisconsin, for example, has no limitations or requirements for reinsurance cost and profit provision assumptions.

Ms. Watkins said in terms of confidentiality and trade secret protection, commercial catastrophe modelers can be very protective of their intellectual property and have certain information that they do not want to file publicly. Insurers may want to protect their proprietary flood pricing and underwriting algorithms from competitors. It is important for state insurance regulators to be able to look at the rate/rule pages from a filing. The only people that want to see published rates are competitors; consumers do not want to see the rate pages. Providing the ability to submit items confidentially is important. For example, in Pennsylvania, information deemed confidential, trade secret or proprietary by the insurer or filer will not be open to public inspections.

Ms. Watkins said repetitive loss properties make up only 1% of NFIP policies, yet they account for more than 25% of the claims. If that states have laws that say insurance companies cannot raise premiums or non-renew because of “act of God” claims, you are essentially telling insurers that if they get one of the severe repetitive loss policies, they cannot get off. This does not work well in the flood insurance space.

Ms. Watkins said her question is how Milliman can help state insurance regulators. She said her team would be happy to work with the NAIC in any capacity that they are able. She said she and her team can: 1) speak to the states individually regarding what is occurring in a particular state; 2) share market research on private flood insurance; and 3) help fill in the details of the catastrophe modeling clearinghouse proposal and understanding the changes in the NFIP.

Mr. Byrd asked how much of Milliman’s estimate of $34 billion to $48 billion direct written premium in the private flood insurance market is due to marketing. Ms. Watkins said this would assume that all of the losses are covered by the private flood insurance market. She said she started with how much loss there was and how much premium would be charged for the loss. This would be accurate if insurers successfully market private flood insurance to everyone. Ms. Watkins said there would probably never be 100% take-up rates for flood insurance. She said other countries have had take-up rates well above 60%. Private flood insurers are going to sell insurance in the states where it is safe and an insurer feels that they can make a reasonable rate of return.

Commissioner Chaney asked if she was seeing problems in the ratemaking for private flood insurance that commissioners will need to address, such as flex rating and confidentiality. Ms. Watkins said no one put the rules out because they do not want a private flood insurance market. She said rules and customs were created over the years that work well for homeowners.
insurance. She said if commissioners understand why the rules are blocking the private flood insurance market, the commissioners might decide which rules were not as useful or necessary as they might have thought. Commissioner Chaney said there may be a need for statutory law changes in several states to allow for the availability of private flood insurance.

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

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The Climate Risk and Resilience Insurance (C) Working Group of the Property and Casualty Insurance (C) Committee met in New York, NY, Aug. 3, 2019. The following Working Group members participated: Mike Kreidler, Chair, represented by Jay Bruns and Annalisa Gellermann (WA); Ricardo Lara, Vice Chair, represented by Michael Peterson (CA); Joanne Bennett (AK); Peg Brown (CO); William Arfanis and George Bradner (CT); Paul Yuen (HI); Judy Mottar (IL); Robert Baron (MD); Phil Vigliaturo (MN); Derek Oestreicher (MT); Anna Krylova (NM); Marshal Bozzo (NY); Tracy Snow and Tom Botsko (OH); Rick Blackwell (OR); and Michael McKenney (PA). Also participating were: Travis Grassel (IA); Warren Byrd (LA); Elizabeth Kelleher Dwyer (RI); and Scott A. White (VA).

1. **Adopted its July 8 and April 12 Minutes**

Mr. Baron made a motion, seconded by Ms. Gellermann, to adopt the Working Group’s July 8 (Attachment Three-A) and April 12 (Attachment Three-B) minutes. The motion passed unanimously.

2. **Heard an Update on Insurance Issues Related to the 2018 California Wildfires**

Commissioner Lara said the NAIC sponsored Vision 20/20: A Fire Resilient California, a Fire Summit held in Redding, CA, April 16–17. The two-day summit was attended by 11 insurance commissioners, including many western state neighbors and states from other regions like Connecticut and Tennessee. One day was spent touring the recent, tragic damage in Paradise in Northern California, including meeting with the city manager. California wildfires caused more than $12 billion in insured losses in 2018, resulting in 85 tragic deaths. The 2018 wildfires rank as the world’s most expensive natural disaster. This has created much concern regarding the availability and affordability of insurance in the Wildland-Urban Interface (WUI). The second day of the summit featured presentations and discussions with colleagues to help further develop ideas to address wildfire insurance issues. Presentations, delivered by California Department of Insurance (DOI) staff, focused on the affordability and availability of insurance, improving the processing of claims, and addressing underinsurance and how the states should approach the insurer of last resort. Discussion centered on ways to promote pre-disaster mitigation, home hardening, and improvements to the Fair Access Insurance Requirements (FAIR) Plan.

Commissioner Lara also said he convened the California Climate Risk: Insurance-Based Approaches to Mitigation and Resilience symposium on July 23 in partnership with the University of California, Los Angeles (UCLA) Law School, the University of California (UC), Berkeley Law School, and the United Nations Environment Programme (UN Environment). There were more than 100 attendees, including Hawaii Insurance Commissioner, Colin M. Hayashida; Oregon Insurance Commissioner, Andrew Stolfi; and staff from the American Samoa Insurance Department. At the symposium, California announced a new partnership with the United Nations (UN) Principles of Responsible Insurance (Principles). With this announcement, California becomes the first American state to collaborate with UN Environment to create a Sustainable Insurance Roadmap by the summer of 2020. This effort will develop a strategy and action plan that will tackle the growing risks of climate change, including rising sea levels, extreme heat, and wildfires. As part of this collaboration, California will engage with researchers, risk management experts, insurers, and reinsurers to find ways to encourage innovative risk management and insurance. The goal is to develop an action plan that will address the growing risks of climate change, including insurance products to promote cooler streets, renewable energy, and more protective natural infrastructure. New York is an ideal place to talk about natural infrastructure and nature-based solutions. When Hurricane Sandy caused significant damage to the northeastern states in 2012, wetlands were critical to defending communities. The presence of coastal wetlands prevented $625 million in damages. That is a significant amount of savings for homeowners, and it reduced the social costs that come along with the loss of a home or business. Like wetlands, mangroves are protectors against storm surge and flooding. According to researchers, if mangroves did not exist, flood damages would increase by $82 billion dollars a year. When remembering all the disasters of the last few years—the terrible floods in Nebraska and Arkansas this past spring, the extreme cold temperatures in the upper Midwest, and the California wildfires—reducing climate risks needs to be a priority.
3. Heard an Update on the Insurer Climate Risk Disclosure Survey

Mr. Bruns said the Insurer Climate Risk Disclosure Survey (Survey) was sent out to over 1,000 applicable insurers last week. The Survey has been administered as part of a multi-state initiative for the last decade. The states that participate in the survey are California, Connecticut, Minnesota, New Mexico, New York and Washington. As with every year, insurers have until Aug. 31 to report, and the results are posted on the California Insurance Department website. This year, a message to insurers was included, encouraging them to refer to the Task Force for Climate-Related Financial Disclosures (TCFD) guidelines when filling out the Survey. The International Association of Insurance Commissioners (IAIS) and the Sustainable Insurance Forum (SIF) have endorsed the idea of insurers using these guidelines established by and for insurers to report on climate.

4. Heard a Presentation on How One Concern, an American Family Insurance-Backed Startup, Uses AI to Enable Cities, Corporations and Citizens to Build Natural Disaster Resilience

Peter Gunder (American Family Insurance) said he is the Chief Business Development Officer (CBDO) for American Family Insurance. In this role, he leads a group of venture capitalists, innovators, data scientists, and business development professionals focused on customer-centered risk. As technology advances, American Family Insurance increasingly supports proactive protection of its customers. Insurance, to American Family Insurance, is no longer about reactive reimbursement; the company commits itself to increasing the safety of its customers and the communities within which it does business. This may be by such measures as embracing experiential technology; mitigating fire, theft and water losses; or investing in sustainable infrastructure. American Family Insurance, now a mutual company, has expanded rapidly over the last eight years, particularly in its homeowners and personal auto lines. It purchased direct auto insurer, The General, in 2012; direct homeowners’ insurer, Homesite Group Insurance, in 2013; and independent agency-based small business insurer, The Main Street America Group, in 2018. Since 2010, American Family Insurance has also been a very active investor in early stage startups, with a total of 112 investments in 59 different startups. It has made a commitment to invest $50 billion in mission-driven companies that provide a financial return and a measurable social impact. This includes home automation, connected vehicles, and data analytics companies with a focus on resilience. It has been a minority stakeholder in One Concern since 2015.

Emily Grover-Kopec (One Concern) said she is the Director of Insurance Practice at One Concern. She has spent more than a decade in the insurance industry, including serving as the Vice President of Model Solutions for Risk Management Solutions (RMS). One Concern was created in 2015 as the outcome of the personal experience of its CEO, Ahmad Wani, who survived being stranded on his roof for seven days during the catastrophic Kashmir flood in 2014. While at Stanford University, Mr. Wani met artificial intelligence (AI) expert, Nicole Hu, and earthquake expert, Tim Frank; together, they worked to apply data science and machine learning to natural disasters and climate change. The Palo Alto, California-based company uses technology to help predict and react to climate-related and seismic disaster impacts; analyze critical infrastructure and what is at risk; run realistic training scenarios; and help boost disaster recovery times by showing links of a community, such as healthcare, power, food and shelter. By using AI, its models can achieve a level of granularity and dynamicity not capable by traditional models. This enables responders to evacuate more quickly and effectively by pinpointing the effect of incoming disasters on communities ahead of time. The detailed disaster scenario drills also allow cities to prepare more thoroughly in advance of disasters. The company’s clients include city governments, such as San Francisco, Los Angeles and Seattle. The company plans to expand its reach to private sector clients, such as insurers, utilities and private companies.

Insurers have expressed interest in how these new tools can assist in claims, create new insurance products, expand access to insurance, and drive resilient businesses and communities. Physical-based traditional catastrophe models have served the insurance industry well for the past 25 years. However, their static nature means it takes considerable effort and time to update them for new learnings. In contrast, One Concern’s models leverage machine learning to continually improve by learning from an event and correcting itself in real-time. Its models use dynamic data, typically buried in deep silos across public and private sectors. It combines this data with innovative modeling techniques that consider the interconnectedness of independent structures and their dependencies and lifelines. This creates a digital footprint with the potential to identify unknown liabilities and risk to better inform an insurer’s decisions about risk mitigation and risk transfer.

For instance, in the existing business interruption insurance market, risk to critical business dependencies is not modeled in a consistent or comprehensive way. Additionally, coverage commonly excludes infrastructure dependencies, limiting the effectiveness of coverage. In contrast, One Concern’s models provide a comprehensive view of risk to the business and coverages needed. Specifically, its models start with a stochastic set of disaster scenarios in a specified region, then they produce probabilities of damage to assets and dependencies (e.g., water, power, roads, etc.) across scenarios. The aggregated risk for each facility, including impact and recovery time, is then used to estimate the expected loss in productivity hours per facility.

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Ms. Gellermann asked if One Concern could share any real-life applications of its models.

Carl Hedde (One Concern), who leads the insurance practice at One Concern, said the company initially focused on local emergency response, allowing responders to see things such as where a wildfire was moving. Down the road, its tools will become valuable for ultimate risk valuation and the measurement of risk accumulation.

Commissioner Lara asked if there was a difference in application between urban and rural areas.

Mr. Hedde said the company’s goal is to map out urban dependencies, first in the U.S. and Japan, then globally. Ms. Grover-Kopec said it is focused on urban areas first because its method of gathering dependency data is currently on a city-by-city collaboration basis.

Commissioner Lara said California is in critical need of models flexible enough to help the state tailor mitigation and response plans to each community’s unique topography and infrastructure, thereby encouraging insurers to continue providing coverage.

Mr. Hedde said the company’s goal is to help a city better identify its deficiencies, so it can better prepare and respond to events. As part of this goal, the company plans to eventually offer more pre-event tools, such as a resilience score.

Mr. Bozzo asked if One Concern was focused more on community outreach or partnerships with insurers.

Mr. Hedde said resilience needs to be a unified effort that includes more than just insurers. Communication needs to be through multiple channels. As such, the resilience score would be relevant to all industries and stakeholders.

Mr. Bradner said One Concern’s product is very pertinent to his work as a state insurance regulator in Connecticut and as co-chair of the Federal Emergency Management Agency (FEMA) Long-Term Recovery Task Force. He said he would be interested in more discussion with One Concern on how its product could be of help in Connecticut.

Mr. Hedde said his frustration is that, while the insurance industry does a good job estimating post-event loss costs, it does not do enough to model the positive impact of pre-event mitigation responses.

Commissioner Lara said real-time modeling will become more essential to first responders and disaster planning as climate change renders historical data less relevant in some cases.

Ms. Brown said she sees this as the wave of the future as our society seeks to build stronger communities. Colorado is currently looking at various methods to improve resilience at the community level and help trades build with a more forward-looking perspective. Insurers need to begin to calculate the positive impact of stronger building in claims and reflect it in their pricing.

Mr. Bruns asked One Concern to elaborate on how first responders could have benefited from its product during the 2018 Houston flood.

Ms. Grover-Kopec said its flood model provides dynamic, hyperlocal predictions through the combination of hydrological and hydrodynamic models, along with machine learning. It can predict inundation and impact levels up to five days in advance. This allows cities to zero in on what areas are essential to be evacuated. In contrast, Houston’s models lacked the same level of granularity and thus were only able to identify a wide swath of areas with over a million people potentially in harm’s way. Evacuating that many people is not practical.

Commissioner Lara said California, Colorado and Oregon are beginning to see a lot of flooding from extreme atmospheric rivers. For instance, the city of Guerneville had record rainfall of 20 inches in two days, devastating many families. Flood modeling needs to consider atmospheric rivers. One Concern’s presentation illustrates how the insurance industry can be proactive, instead of just reactive. Real-time data is essential for better planning and expanding insurance products.

David Kodama (American Property Casualty Insurance Association—APCIA) said the APCIA supports the Working Group and state insurance regulators’ efforts to improve resilience.

Commissioner Lara said he sees that there will be many future opportunities to work with the APCIA on improving community resilience and lowering catastrophic risk to insureds.
Having no further business, the Climate Risk and Resilience (C) Working Group adjourned.
The Climate Risk and Resilience Insurance (C) Working Group of the Property and Casualty Insurance (C) Committee met via conference call and webinar July 8, 2019. The following Working Group members participated: Mike Kreidler, Chair, Jay Bruns, David Forte, Patrick McNaughton and Steve Valandra (WA); Ricardo Lara, Vice Chair, represented by Aaron Ezroj, Lisbeth Landsman-Smith, Michael Peterson, Camilo Pizarro and Fransico Raygoza (CA); Alex Romero (AK); Peg Brown (CO); George Bradner and Andrew N. Mais (CT); Judy Mottar (IL); Robert Baron (MD); Matthew Mancini (MA); Peter Brickwedde (MN); Anna Krylova (NM); Marshall Bozzo (NY); Tom Botsko (OH); TK Keen (OR); and David Buono (PA). Also participating were: Amy Groszos and Shaw P. Stiller (FL); and Jeana Thomas (MO).

1. **Heard a Webinar/Presentation from HSBC on Insurance and Sustainable Finance, Including ESG Integration by Credit Rating Agencies and Its Impact on Sustainability Investing**

Commissioner Kreidler said the area of insurance and sustainable finance is a rapidly evolving area with great potential for insurers to help the U.S. get to the lower carbon economy. It stands to reason, he said, that U.S. insurers can have a role to play, given their $5.5 trillion investment portfolio. As HSBC Securities Inc.’s presentation on the role of insurers in the sustainable financing landscape will demonstrate, this issue is complex. Still, the pace seems to be picking up. Just recently, Chubb, Liberty Mutual and Zurich have announced new investment policies that reduce their exposure to coal and increase their investment in renewable energy. Zurich has also joined the Stakeholder Advisory Group of the Science Based Targets Initiative, a project to help financial institutions align their lending and investment portfolios with the Paris Agreement ambition. In one sense, this trend is not new: Through the annual NAIC Climate Risk Disclosure Survey, for the past 10 years, about 1,300 insurance companies have been asked to respond to the survey and tell us how they are adjusting their investment portfolio to address climate change.

Divya Bendre (HSBC) stated HSBC is one of the largest banking and financial services organizations in the world, with operations in 66 countries and territories. Supporting the transition to a low-carbon economy is one of its key priorities. Green bonds issuance grew by 3% to $167.6 billion from 2017 to 2018. The top issuers have been financial corporations and development banks. The most common use of proceeds has been for energy and real estate. There are $596 billion in green bonds globally to date. Growth has been organic, driven by investor demand. However, this is not enough. Providing investors more information could add to the certainty needed to improve the uptake of sustainable investment. As such, HSBC is a member of the International Capital Market Association’s (ICMA) Executive Committee for Green Bond Principles (GBP), a set of voluntary standards for issuers of green bonds. For the insurance industry, the Manulife Corporation provides an excellent case study in sustainable finance. (Manulife operates primarily as John Hancock in the U.S.) Highlights from its 2018 Sustainability Report include: 1) investment of $1 billion in renewable energy and energy efficient projects, including the issuance of its second green bond; 2) management of almost $241 million in assets through four environmental, social and governance (ESG) funds by John Hancock Investments; 3) development of an agricultural sustainability framework for measuring and managing the sustainability performance of U.S. farmland, which has begun for Hancock Agricultural Investment; 4) United Nations (UN) Principles for Responsible Investment (PRI) signatory designation for Manulife Investment Management; and 5) sustainable building certification of 80% of Manulife’s real estate portfolio.

There are several ways the investment industry is evolving. A growing number of investors frame their real-world impact aspirations—as driven by long-term beneficiary considerations—in terms of the UN’s Sustainable Development Goals. A traditional view evaluates investments on a two-dimensional axis of risk and return. There is an emerging view that extends the two-dimensional view of risk versus return with a third dimension for real-economy impact. The extent to which an investor balances real-world impact alongside risk and return considerations reflects each investor’s personal weighting of each risk factor. ESG data contributes to both traditional risk-return analysis and impact analysis.

In order to communicate sustainable investment choices, organizations may choose to issue their instruments with a sustainability-label. Margin/coupon-focused instruments include sustainability-linked loans that provide margin savings based on the firm’s performance against ESG targets. There are approximately $87 billion in sustainability-linked loans currently. Use of proceeds-focused instruments requires an issuer of a green, social or sustainability bond to use the funds raised to finance activities with clear environmental benefits. There are approximately $750 billion in these types of bonds. Green loans provide...
loans that are environmentally and financially friendly. There are currently about $25 billion in these loans. The Loan Market Association (LMA) and Loan Syndic和平 Trading Association’s (LSTA) have published the Green Loan Principles (GLP). Some issuers have labeled their bonds as ‘Transition bonds’ where the proceeds are allocated to projects that may not fit with intuitive green definitions (e.g. renewable energy) but are aimed at helping the issuer switch to a less carbon intensive way of doing business. Other structured transactions include equity-indexed linked bonds and “green coupon” bonds. Equity-indexed linked bonds combine fixed income investment with additional potential returns tied to performance of equities from companies selected based on their corporate sustainability ratings. A green coupon bond has environmental attributes embedded in the coupon structure (e.g. the IFC Forest Bond) which gives investors the option of receiving coupon payments in cash or carbon credits.

According to the SustainAbility 2018 Rate the Raters survey of corporate sustainability practitioners, RobecoSAM Corporate Sustainability Assessment was viewed as the highest quality ESG performance rating source. Moody’s Investors Service and Standard & Poor’s (S&P) Global Ratings have signed the PRI’s Statement on ESG in credit ratings. As such, both have made visible progress in complementing rating analysis with additional research publications on ESG considerations to refine and improve methodologies and transparency. Credit rating agencies (CRAs) are also making greater efforts to outline their approaches to ESG in their ratings. Fitch Ratings announced this year it plans to publish “ESG relevance” scores showing how ESG factors influence ratings scores. Moody’s has issued a report on how it factors ESG into credit ratings, and S&P plans to do the same. Moody’s has agreed to acquire ESG research and data firm Vigeo Eiris to expand beyond credit risk assessment. It has also proposed a scoring framework for assessing carbon transition risk for rated, publicly traded nonfinancial corporates. Moody’s has assessed the credit exposure of 84 sectors, representing $74.6 trillion in related debt, to environmental risks and depicted its high-level results in an Environmental Risks Global Heatmap infographic. Its 2018 Heatmap, released in September 2018 as part of its investor research report, shows 11 sectors with $2.2 trillion of debt at risk. At immediate risk was the unregulated utilities and coal mining companies.

Green taxonomies are currently emerging to provide definitions and classifications on what it means to be a green activity. Most prominently, the European Commission (EC) is working on a European Union (EU) Action Plan on Sustainable Finance, designed to reorient capital flows towards sustainable investment and mainstream sustainability into risk management. Sixty-seven economic activities have been classified as being compatible with, contributing to or having activities that enable a zero-carbon economy by 2050 in the draft taxonomy published by a Technical Expert Group formed by the EC.

Gray Schweitzer (HSBC) stated central banks and supervisors, such as the Bank of Canada and the Bank of England Prudential Regulation Authority (PRA), are beginning to engage with the sustainability movement by considering how to integrate climate risks and sustainability into their financial solvency oversight and internal investment operations. Additionally, while discussions on climate stress tests are currently in their very early days, some supervisors are starting to act on this front. For instance, PRA has recently announced it will start working on the design of its climate stress tests in fall 2019. HSBC believes once its use is in place by one supervisor, others are likely to follow suit.

Commissioner Kreidler asked if the increase in interest on sustainable finance in North American was more of a push or pull dynamic. Ms. Bendre said it reflects a bit of both. Some stakeholders are not doing much beyond talking about it, but nearly everyone is at least beginning to look at ESG factors in investment processes since the data is now readily available through conventional platforms like Bloomberg and Yahoo Finance. The banking and public sector are well ahead of the insurance sector in terms of sustainable finance transactions, but there are a group of insurers proactively positioning themselves to be leaders in this space. Mr. Schweitzer stated HSBC first experienced a significant uptake in interest from its European clients in the area of sustainable finance beginning in 2015. However, similar interest from North American clients has only gained traction in the last year. The increase in interest among North American clients reflects the growing interest they were seeing from their own clients in this area and an increase in general awareness from the press and bond issuance in the market.

Commissioner Kreidler said he is surprised at the activity going on in this space. He asked if there was a difference in how large and small insurers were responding to integrating ESG factors into their considerations. Mr. Schweitzer said large insurers are more active in this space because they have more resources and face greater pressure in the form of reputational risks. For medium-sized companies, the results are mixed. Small insurers are not likely to have the resources to undertake these activities. However, many outsource their portfolio management to major asset managers, such as BlackRock Solutions, which integrates ESG factors into its portfolio management.

David Kodama (American Property Casualty Insurance Association—APCIA) asked via webinar question submission subsequent to the conference call if there was any specific treatment for ESG factors by the NAIC’s Securities Valuation Office (SVO). Charles Therriault (NAIC) stated there is no uniform approach by the rating agencies to assess ESG or what it may
mean to the risk of default or loss. Neither the Capital Adequacy (E) Task Force nor the Valuation of Securities (E) Task Force has requested that it be incorporated into the SVO’s methodologies. As such, there is no special treatment associated to ESG at this time.

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

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The Climate Risk and Resilience Insurance (C) Working Group of the Property and Casualty Insurance (C) Committee met via conference call and webinar April 12, 2019. The following Working Group members participated: Mike Kreidler, Chair, Jay Bruns, AnnaLisa Gellermann and David Forte (WA); Ricardo Lara, Vice Chair, represented by Michael Peterson (CA); Joanne Bennett and Michael Ricker (AK); Colin M. Hayashida (HI); Judy Mottar (IL); Matthew Mancini (MA); Robert Baron (MD); Derek Oestreicher (MT); Anna Krylova (NM); Barbara D. Richardson (NV); Andrew Stolfi, David Dahl and TK Keen (OR); and David Buono (PA). Also participating were: Jim L. Ridling (AL); William Lacy (AR); Leslie Ledogar (DE); Travis Grassel (IA); Kate Kixmiller (IN); Heather Droge (KS); Warren Byrd (LA); Brent Kabler (MO); Andy Schallhorn (OK); and Elizabeth Kelleher Dwyer (RI).

1. **Heard a Presentation on the U.S. Government’s Fourth National Climate Assessment**

Commissioner Kreidler welcomed the Working Group’s new vice chair, Commissioner Lara, whom he said is already taking a leadership role on climate change at the NAIC. He said he looks forward to joining him next month with other commissioners to view the devastation and examine lessons learned from the 2018 wildfires in California. Although this meeting is being held via conference call, he said he anticipates the Working Group will meet in person at future national meetings.

Commissioner Kreidler said today’s presentation will provide the Working Group with insights on how the federal government views climate-related threats and what the latest science is telling us. In November 2018, 13 federal agencies—including the U.S. Department of Defense (DOD), the U.S. Department of Energy (DOE), the National Aeronautics and Space Administration (NASA), the National Oceanic and Atmospheric Administration (NOAA) and others—released the National Climate Assessment (NCA). This presentation is from one of the authors of the report and will help guide the work of state insurance regulators. One main conclusion of this report is that without action, annual losses in some economic sectors are projected to reach hundreds of billions of dollars by the end of the century.

Gerald Geernaert (DOE and U.S. Global Change Research Program—USGCRP) said the federal Global Change Research Act of 1990 mandates that the USGCRP deliver a report to the U.S. Congress and the president no less than every four years that analyzes current trends in global change, both human-induced and natural, and projects major trends for the subsequent 25 to 100 years. The fourth NCA (NCA4) fulfills this mandate. It was produced by a team of more than 300 experts guided by a 60-member federal advisory committee. The report was extensively reviewed by the public and experts, including 13 federal agencies and a panel of the National Academy of Sciences (NAS). The Climate Science Special Report (CSSR) serves as the first volume of the NCA4 and provides an analysis of how climate change is affecting the physical earth system. Volume II focuses on the human welfare, societal and environmental elements of climate change and variability for 10 regions and 18 national topics. It provides examples of actions underway in communities to reduce the risks associated with climate change and increase resilience.

Mr. Geernaert said that since the last NCA report, there have been significant advances made in: 1) the attribution of the human influence for individual climate and weather extreme events; 2) scientific understanding of how climate change may affect extreme events; 3) localized information (with resolution of 15 miles); 4) new observations in ice loss; and 5) the ability to project potential large-scale surprises.

Mr. Geernaert said there are a lot of efforts within federal science agencies to better simulate the probability of uncertain events, such as wildfires from drought and lightning, by integrating observations and model simulations before the next NCA release in 2022 (NCA5). The NCA5 will also, for the first time, incorporate ground and surface water as a component of water supply. Dynamical projections will improve sea level rise projections. Modeling resolutions have improved from 80–100 km in the previous NCAs to 25 km in the NCA4. The NCA5 will likely reach resolutions of 3 km. The higher resolutions (10–25 km) allow scientists to examine the coastal estuaries and regions with boundaries (mountain states) for the first time.

Mr. Geernaert said state insurance regulators should stay abreast of the large quantity of research in this area going on separate from the NCA. They should also contact the DOE’s Pacific Northwest National Laboratory and the NOAA’s Earth System Research Laboratory, which are doing pertinent research in the area of mitigation.
Mr. Geernaert said key messages of the NCA4 include: 1) global climate is changing rapidly with clear evidence that greenhouse gas emissions are a dominant cause; 2) the earth’s climate will continue to change over and beyond this century (2–5 degrees Celsius); 3) sea level is likely to rise 1–4 feet by the end of the century; 4) annual average U.S. temperatures will increase 1.4 degrees Celsius over the next few decades, regardless of future emissions; 5) increases in the frequency and intensity of heavy precipitation events in most parts of the U.S. are projected to continue; 6) the Arctic will likely be nearly free of sea ice in the late summer; 7) Atlantic and eastern North Pacific hurricane rainfall and intensity are projected to increase, as are the frequency and severity of landfalling “atmospheric rivers” on the West Coast (driven by sea warming); 8) there will be a greater-than-average sea level rise for the Northeast and western Gulf of Mexico under lower emissions scenarios and most of the U.S. coastline (other than Alaska) under higher emissions scenarios; and 9) under projected warming of approximately 0.5 degrees Fahrenheit per decade, all nearshore coral reefs in the Hawaii and U.S.-affiliated Pacific Islands region will experience annual bleaching before 2050.

Mr. Forte asked if there are federal agencies considering the NCA when they plan new construction projects and if there was a statutory requirement that they do so. Mr. Geernaert said the federal agencies are doing so, particularly on the new construction of facilities owned by the federal government. For instance, the DOE requires the Pacific Northwest National Laboratory to incorporate projections of any risk that might affect the construction of any new building over its lifetime. The DOD has also become robust in incorporating climate into how it designs and deploys.

Following the call, David Reidmiller (USGCRP) responded by email that the Obama administration issued a presidential directive in 2015 stating that federal agencies must consider climate change as a component of the infrastructure planning process. However, as with many presidential directives issued from prior administrations, it is unclear to the degree this presidential directive is currently being implemented across the federal agencies. While there is not a statutory requirement to consider the NCA, specifically, when planning new construction projects, there is a fairly complex landscape of requirements, guidance, etc., on taking account of climate considerations in infrastructure projects (whether it be the greenhouse gas emissions associated or the vulnerability to climate impacts decades into the future). These vary by jurisdiction, such as the U.S. Army Corps of Engineers, the U.S. Department of the Interior, the U.S. Department of State, the DOD (where requirements would be contained in the annual federal National Defense Authorization Act), the U.S. Environmental Protection Agency (EPA), the U.S. Department of Transportation, etc. The White House Council on Environmental Quality led an effort under the Obama administration to standardize some of these considerations.

Ms. Krylova asked how the differences in temperature were attributed to the different factors. Mr. Geernaert said the NCA4’s approach was to look at how the different types of wind power, solar power or nuclear energy might reduce greenhouse gas concentrations.

Following the call, Mr. Reidmiller responded by email that Chapter 2 of the NCA4 Vol. II provides an interactive illustration that allows the user to explore different “forcings” to see the influence of individual natural and human-caused forcings on Earth’s surface temperature since 1880. One goal of climate scientists is to develop models that can accurately make predictions of the trends and variabilities of global temperature. The goal is to achieve model calculations that match as closely as possible to the observational record. A key to model validation is to do hindcasts. Hindcasts start a model-based prediction based on initial conditions in, for example, 1980, and compare them against observed data to see how well the models perform. If the model predictions and observations show significant change, the scientists want to understand which forcings are causing the change. This is the focus of the interactive illustration.

Mr. Reidmiller explained that in the upper left figure of slide 10, the scientists tried to determine if natural forcings (e.g., by the sun or volcanoes or orbital changes) can explain the trends in the observational record. By freezing the human emissions at levels during the period of no noticeable climate change (e.g., from 1880 to 1930), the natural forcings can be investigated one by one. Data on the time series of natural forcings is available, mainly from NASA. The climate model predicts there is subtle, but small, variability of the climate caused by variabilities of the natural forcings, but no general climate warming.

Mr. Reidmiller explained that the lower left figure of slide 10 examines the individual forcings associated with human activities. These include forcings just by increasing concentrations of greenhouse gases during the past century (in purple); just the variations of ozone (in yellow); cooling associated with increased aerosol concentrations as a consequence mainly of air pollution (in brown); and land cover change associated with, for example, deforestation. The various lines can be viewed as causes of climate variability and change, if all other forcings are assumed to be non-changing. As can be seen, the increases in greenhouse gases represents the only significant cause of climate change, when compared to the observational record. It also
illustrates the climate would not have warmed, had there not been a steady increase in anthropogenic greenhouse emissions to the atmosphere.

Mr. Reidmiller explained that the figure on the right of slide 10 represents the sum of all known forcings. It illustrates the models are sufficiently good in reproducing the observed upward trend in global temperature. One cautionary note is that the panels shown in slide 10 focus on the global average temperature and do not address the role of anthropogenic emissions on extreme events, such as wildfires, hurricanes or sea ice retreat. These are more difficult questions that require a more sophisticated analysis. The NCA5 will address these more sophisticated challenges.

Ms. Ledogar asked how individual states connect with the NCA. Mr. Geernaert said the NCA5 will have even more state-level information. The NCA sees each state as a stakeholder. Individual states should establish ongoing communication during these years leading up to the next NCA.

Following the call, Mr. Reidmiller responded by email that the states are encouraged to contact him (DReidmiller@usgcrp.gov). Additionally, they can sign up for the USGCRP newsletter to stay abreast of programmatic activities and get engaged in related efforts. The 10 regional chapters of the NCA provide an entry point for any state to better understand what its climate risks are and, in some cases, what can be done to address them. The USGCRP can also connect the states directly with the authors of the regional chapter of interest. There are a collection of complementary products to the NCA the states might find value in. Additional resources include the EPA’s State Climate Fact Sheets, NOAA’s State Climate Summaries and the NOAA Climate Resilience Toolkit, which includes guidance on implementing adaptation actions and case studies for how communities across the country are dealing with climate risk. There is also a Climate Explorer that offers customizable graphs and maps of observed and projected temperature, precipitation and related climate variables for every county in the contiguous U.S.

Mr. Reidmiller explained that recent years have brought a proliferation of state-level climate assessments and related efforts that provide even more targeted climate information at the local level. Jurisdictions having done climate assessments include Hawaii and the U.S.-affiliated Pacific Islands, California, Georgia, Indiana, Montana, Nebraska, New York, Oregon and Vermont. Much of this work was summarized in a workshop held at the National Academies of Sciences, Engineering and Medicine in August 2018. Each state has undertaken these endeavors in different ways, with different funding models, etc. But each state also has a wealth of intellectual capacity between in-state universities, as well as the U.S. Department of Agriculture’s (USDA) Climate Hubs, the U.S. Geological Survey’s (USGS) Climate Adaptation Science Centers and the NOAA Regional Integrated Science & Assessments (RISA) Program. The States should also connect with the U.S. Climate Alliance, which is a bipartisan collection of 23 states/governors who have pledged to take action to address climate change. It provides a sub-national (state) level forum to exchange best practices, lessons learned, etc.

Having no further business, the Climate Risk and Resilience (C) Working Group adjourned.
The Terrorism Insurance Implementation (C) Working Group of the Property and Casualty Insurance (C) Committee met in New York, NY, Aug. 4, 2019. The following Working Group members participated: Martha Lees, Chair (NY); Joanne Bennett (AK); Ken Allen and Susan Stapp (CA); George Bradner (CT); Sean O’Donnell (DC); Virginia Christy (FL); Judy Mottar (IL); Kevin Beagan (MA); Angela Nelson (MO); Fred Fuller (NC); Justin Zimmerman (NJ); Cuc Nguyen (OK); Beth Vollucci (RI); Mark Worman (TX); and Rebecca Nichols (VA).

1. **Discussed the Reauthorization of TRIA**

Ms. Nelson said Director Chlora Lindley-Myers (MO) represented the NAIC at a Congressional roundtable discussing the potential reauthorization of the federal Terrorism Risk Insurance Act (TRIA) on May 31 in Kansas City, MO. The roundtable was hosted by U.S. House of Representatives (House) Committee on Financial Services members, Representative Lacy Clay and Representative Emanuel Cleaver. Director Lindley-Myers said the roundtable was attended by insurance companies, reinsurance companies, trade associations, and real estate and business groups.

Ms. Nelson said Director Lindley-Myers reiterated state insurance regulators’ support for the Terrorism Risk Insurance Program (TRIP) and a long-term reauthorization. She said all roundtable participants expressed a desire for reauthorization, either for a lengthy period or permanently. She said the industry expressed their desire for there to be no changes to TRIP. She said some supported the U.S. Congress (Congress) revisiting TRIA periodically, while others said Congress could always do that even if not up for reauthorization.

Ms. Nelson said there was some concern about how a cyberattack could be certified if an actor could not be identified. Participants in the roundtable desired more certainty from the U.S. Department of the Treasury (Treasury Department) regarding certification. She said in a response to some claiming the program is a bailout, industry members said most insurers would no longer write insurance risk without the program because the risk is uninsurable. The industry also noted that Congress would be paying for losses on the backend if there were not a program that could obtain recoupment. Participants said they do not want the program to lapse, as that would create problems as companies begin to issue conditional exclusions. She said the industry stated that the data call has been running more smoothly since it became a joint data call between state insurance regulators and the Treasury Department.

Brooke Stringer (NAIC) said TRIA is set to expire Dec. 31, 2020, and the NAIC is encouraged that the U.S. Senate (Senate) Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services have begun focusing on reauthorization and holding hearings far in advance of its expiration. She said those committees are evaluating how TRIA has worked, how it has affected various stakeholders, and what the private market’s current capacity is to provide terrorism insurance. The committees are also exploring TRIA's coverage of cyber-related risk and asking questions about any suggested changes related to nuclear, biological, chemical or radiological (NBCR) coverage. Ms. Stringer said Congress members have raised affordability concerns for religious institutions that have increasingly become targets for terrorist activity.

Ms. Stringer said she expects to see initial drafts of legislation over the next year. She said the NAIC supports a long-term reauthorization of seven to 10 years, and it will remain engaged with Congress as they begin considering reauthorization legislation. She also noted that the Government Accountability Office (GAO) is now conducting a study on TRIA reauthorization. She said the Treasury Department’s Advisory Committee on Risk-Sharing Mechanisms will be meeting on Aug. 12 to discuss potential recommendations for the Federal Insurance Office (FIO) on private market risk-sharing mechanisms.

2. **Heard a Report on the 2019 Terrorism Risk Insurance Data Call**

Ms. Lees said the data on the joint state insurance regulator/Treasury Department data call was due by May 15. She said NAIC staff worked with companies on missing or incorrect filings, and it has conducted preliminary analysis of the data. She
said state insurance regulators took comment from the industry earlier in the year on the State Supplement portion of the data call and subsequently simplified the data call and reduced certain data elements. She noted that the State Supplement data is due Sept. 30, and state insurance regulators hope the simplified data call will result in better quality data that can be analyzed.

3. **Heard a Presentation from Aon**

Aaron Davis (Aon) said Aon represents property buyers in large companies, as well as smaller insurers on the reinsurance side. He said Aon focuses on the terrorism threat environment for clients. He said more “lone wolf” attacks are being seen with less coordination from a global perspective. He said more political attacks are being seen, as well as the emergence of cyberthreats. He said cyberattacks can affect power systems and infrastructure with enormous losses, bringing great concern to policyholders and insurers. NBCR threats are also concerning.

Mr. Davis said TRIA has worked to create a functional and affordable market. He said Aon supports the reauthorization of TRIA, and it should be extended for a minimum of 10 years. He said the federal backstop is meant to respond to catastrophic events that have greater losses than 9/11. He said an event similar to 9/11 would be retained entirely by the private market.

Mr. Davis presented take-up rates for various industry sectors, showing take-up rates above 80% for health care, entertainment, real estate and retail industries. Take-up rates are lower for manufacturing and energy sectors. Rates are comparatively high in the financial sector and lower in energy and manufacturing sectors. He said overall, about 72% of businesses are purchasing terrorism insurance. Terrorism limits tend to be higher in the technology, public and health care sector.

Mr. Davis said terrorism premium as a percentage of property premium and as a percentage of total insured value has fallen by more than 80% since 2002. In the same time period, take-up rates have more than doubled.

Birny Birnbaum (Center for Economic Justice—CEJ) asked what it would cost from an actuarial perspective if insurers had to purchase reinsurance. Mr. Davis said the price would vary based on the policyholder’s size and risk profile. In the absence of the mandatory offer of terrorism coverage required by TRIA, fewer insurers would offer coverage and prices would be higher. Mr. Davis said there are estimates that since TRIA began about $24 to $25 billion of premium has been collected. Mr. Birnbaum asked what the value of the reinsurance provided by taxpayers is. Mr. Davis noted that there is a payback provision in place after the fact if the federal government pays upfront for losses. He said terrorism risk by nature does not lend itself to an actuarial price like other insurance products, due to the lack of historical data and unpredictability of the risk.

Ms. Nelson asked for a clarification on whether Aon data was focusing on Fortune 1000 companies. Mr. Davis said they also focus on commercial risk middle market and reinsurance on behalf of carriers, so the risk profile is very broad.

4. **Heard a Report on Terrorism Risk Insurance Data**

Aaron Brandenburg (NAIC) reported on terrorism risk insurance data received in the portion of the data call that was due May 15. He said most files have been received, but data from at least three large insurers is not included in the current analysis, so it should be considered preliminary. He said insurers filed approximately $157 billion of TRIP-eligible premium, $146 billion by non-small insurers and $11 billion by small insurers, along with 80 million policies from non-small insurers. He said the largest lines of business were other liability, commercial multiperil – non-liability, and inland marine.

As for the actual total premium with terrorism coverage, approximately $105 billion of the premium has terrorism coverage associated with it. The actual amount charged for terrorism coverage was around $2.4 billion. This amounts to about 2.3% of the total premium with terrorism coverage.

Mr. Brandenburg said take-up rates were calculated by policy, which could only be done for non-small insurers premiums. The highest percentage of policies with terrorism coverage occurred in the commercial multiperil lines and inland marine, with the smallest percentages in other liability and ocean marine. He said the Western U.S. had the highest take-up rates by policy, typically around 80%, with the Northeast also fairly high in the mid 70% range. When looking at the percentage of premium with terrorism coverage, high percentages were found in boiler and machinery and commercial multiperil, and lower percentages in aircraft and ocean marine. Non-small insurers had 67% of total premium with terrorism coverage, while
small insurers had around 60% with terrorism coverage. Northeastern states were fairly high, while Florida was relatively lower.

Mr. Brandenburg reviewed the percentage of policies with terrorism coverage that did not have an explicit charge. The states with low percentages of policies without an explicit charge included Florida and the Northeast, while the Midwest and California had fairly high percentages of policies with no explicit terrorism charge. He said boiler and machinery and commercial multiperil have higher percentages of policies with a premium charge for terrorism coverage.

Mr. Brandenburg said when looking at the percentage of property exposures covered by terrorism insurance, California, Connecticut and Florida were fairly low compared to the Midwest, Southeast, and parts of the Northeast. For liability exposures, high coverage rates were found in the Northeast, Florida and Texas compared to the West.

Mr. Brandenburg said commercial multiperil, other liability and allied lines were the lines of business with the highest percentage of premium allocated to terrorism risk. Products liability, boiler and machinery, and inland marine were comparatively lower. The jurisdictions with the highest percentages of premium allocated to terrorism risk included Michigan, Nevada, New York and Washington, DC. Western and Southeastern states had fairly low percentages. The average terrorism premiums for policies when there is terrorism coverage were higher in Hawaii, Louisiana, New York, Texas, Washington, DC, and many of the Northeastern states. Mr. Brandenburg said inland marine and ocean marine have the majority of property exposure where NBCR is not included.

Mr. Brandenburg said the NAIC has not completed an analysis looking at cyberinsurance as it relates to terrorism coverage, as well as some other data elements included within the data call. In addition, data from alien surplus lines insurers has some errors, so analysis of that data will be presented later.

Ms. Lees asked whether the charts and graphs presented could be made available. Mr. Brandenburg noted that the data presented was in Tableau, and the NAIC would like to update the dataset with additional company data before releasing something publicly. He said he would work with the Working Group in determining next steps.

Ms. Nelson said when looking at ZIP code data, one can see differences in cities, such as take-up rates being fairly high for the state of Missouri, but low for Kansas City, MO and St. Louis, MO.

5. **Announced CIPR Policy Workshop on TRIA**

Ms. Lees reported that the Center for Policy and Research (CIPR) would be hosting a policy research workshop on TRIA later on Aug. 4. She said the workshop would preset background on the current program, including loss sharing scenarios, in order to target relevant policy research related to renewal of the program.

Having no further business, the Terrorism Insurance Implementation (C) Working Group adjourned.
REGULATORY GUIDE
UNDERSTANDING THE MARKET FOR CANNABIS INSURANCE

NAIC White Paper

July 9, 2019

Drafted by the
Cannabis Insurance (C) Working Group
of the
Property and Casualty Insurance (C) Committee
TABLE OF CONTENTS

I. INTRODUCTION........................................................................................................ 3
II. OVERVIEW OF KEY AUTHORITIES...................................................................... 9
III. SEED-TO-SALE OPERATIONS—AN OVERVIEW AND ARCHITECTURE OF THE CANNABIS INDUSTRY.................................................................................................................. 22
IV. TYPE, SCOPE, AND AVAILABILITY OF COVERAGE AND INSURANCE GAPS... 30
V. BEST PRACTICES AND RECOMMENDATIONS.................................................... 39
VI. CONCLUSIONS...................................................................................................... 44

ADDITIONAL CANNABIS INFORMATIONAL RESOURCES................................. 45
I. INTRODUCTION

A. EXECUTIVE SUMMARY

The cannabis industry is evolving and expanding as more states legalize either or both medicinal and recreational cannabis use throughout the U.S. With new entrepreneurs, investors, large corporate businesses, companies going public and executives entering the market, there is a new level of sophistication to the cannabis industry. The state-legalized cannabis businesses, like any other businesses, face a variety of risks and would like to have access to insurance to mitigate these risks. It is important for state insurance regulators to understand the insurance needs of the cannabis industry and to consider steps to address insurance needs in their respective state markets. Several state insurance regulators have taken steps successfully to encourage insurers to provide insurance for state-legalized cannabis businesses. However, major cannabis insurance gaps exist in many states and even in those states that have encouraged successfully the entrance of insurers into the cannabis insurance market.

The National Association of Insurance Commissioners (NAIC) Cannabis Insurance (C) Working Group was formed in August 2018 to identify insurance issues, gaps and opportunities facing the cannabis industry and to identify best regulatory practices to address these issues—starting with developing a white paper. The purpose of this white paper is to provide information to state insurance regulators, insurers and the broader public about the architecture of the cannabis business supply chain, types of insurance needed by the cannabis industry, the availability of cannabis business insurance in state insurance markets and the extent of insurance gaps, and best practices that state insurance regulators can adopt to encourage insurers to write insurance for the cannabis industry.

B. CANNABIS

The cannabis market rapidly changed over the last few years and continues to change on a daily basis. In 2017, the cannabis industry took in nearly $9 billion in sales. Nationally, in 2018, the overall cannabis industry was worth $10.4 billion¹ and is anticipated to bring in $21 billion in 2021.² Other estimates project that by 2022, the cannabis industry will create an estimated $80 billion in sales annually.³ "In 2017, sales

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of medical and recreational cannabis in the U.S. were nearly nine times higher than Oreo cookies and almost on par with Americans’ collective spending on Netflix subscriptions. With the addition of California’s recreational market sales in 2018, cannabis sales could easily eclipse McDonald’s annual U.S. revenue.”

Additionally, a majority of the U.S. population supports cannabis legalization. About six in 10 Americans say the use of cannabis should be legalized. Since June 2019, cannabis is legal for medicinal use in 33 states and Washington, DC, and cannabis is legal for recreational use in 11 states and Washington, DC.

Not only is cannabis a growing industry, but also it is a significant employer. In 2017, the cannabis industry employed 121,000 people. With the current trajectory, the number of workers could reach 292,000 by 2021. These jobs can range from budtenders and extraction technicians to employees at ancillary companies that generate a large portion of revenue from the cannabis industry. The industry is projected to add as many as 340,000 full-time jobs by 2022. This type of increase in job availability is significant; but, despite the demand for employees in the cannabis sector, there remains an issue with inconsistent positions on the legality of cannabis.

One of the most complex issues facing the cannabis industry is the different treatment of cannabis under federal and state law in states that have legalized cannabis. Despite being legal in many states, at the federal level, cannabis is a Schedule 1 substance that is illegal to manufacture, distribute or sell in the U.S. Currently, federal law also prohibits the sale of cannabis for medical and adult recreational use. Because cannabis is illegal at the federal level, many individuals are not comfortable working in a field where their employment could be considered illegal. Moreover, financial institutions are hesitant or unwilling to work with cannabis companies. Most banks prohibit cannabis-based businesses from opening accounts, which has led to the cannabis industry being mostly cash-based. This proves problematic as cannabis businesses often find it difficult to engage in standard business practices such as paying employees and vendors. It also

makes many cannabis-based businesses targets for criminal activity because of the increased risk of robberies and other theft-related crimes.

In states that have legalized cannabis, some community banks and credit unions are providing banking services to the cannabis industry, but in other locales, state-chartered financial institutions are unavailable. For example, during a regulatory tour, Delaware regulators witnessed one vendor to the market (that was not growing or selling cannabis) receive notice from its state-chartered bank that it would no longer be doing business with the company because of its involvement in the cannabis industry. The magnitude of this concern should not be ignored. “An estimated 70 percent of cannabis businesses have no relationship with a financial institution and thus use cash for all transactions, including salaries for employees.”

The U.S. Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN) has issued guidance for financial institutions to follow regarding reporting revenues from the cannabis industry in those states in which cannabis is legal, which reflects the Treasury Department’s recognition that some banks and credit unions are providing banking services to the cannabis industry. “Surplus lines insurers mainly focus on the development of new coverages and the structuring of policies and premiums appropriate for risks. New and innovative insurance products for which there is no loss history are difficult, if not impossible, to appropriately price using common actuarial methods. Often, after a new coverage has generated sufficient data, the coverage eventually becomes a standard product in the admitted market.” Despite the risks, state insurance regulators should encourage insurers who choose to enter the cannabis market to do so on the admitted market to drive the costs of policies down and make cannabis insurance more accessible for the cannabis industry.

C. Insurance Gaps

The following list shows the different types of cannabis businesses that are in the supply chain: cannabis cultivation, processors/harvesters, manufacturing, retail, distribution, testing labs and microbusinesses.

Below is a list of the types of insurance most frequently needed by the cannabis industry:

- Automobile, including Distribution (auto and cargo)
- Commercial General Liability
- Crop (Indoor/Outdoor)
- Crime Insurance
- Disaster Coverage
- Director and Officer Liability
- Employment Practices Liability
- Equipment Breakdown
- Errors and Omissions
- Excess/Umbrella
- General Liability
- Product Liability
- Premises Liability
- Property
- Surety Bonds
- Workers’ Compensation

As the industry continues to expand, there are more cannabis businesses to insure. No longer is cannabis just the flower used for smoking; the market has expanded to oils, shatter, wax, edibles, topical products, the beauty industry, and other cannabis-infused products. However, even with the increased market activity, many insurers are not willing to write cannabis insurance products due to the cannabis industry’s inability to bank, the federal illegality, and the unknown risks associated with insuring cannabis businesses. Insurance is essential to the security and safety of cannabis businesses, their employees, and their customers. Lack of insurance for the industry adds layers of unnecessary risk and exposure for all market participants.

While cannabis laws vary from state to state, the types of risks facing the cannabis industry generally remain the same. Many of the risks the cannabis industry faces are no different from any other business in the same area of business activity. Outdoor cannabis cultivators face the same risks that other cultivators or agricultural industry businesses face. Outdoor cannabis cultivators, for example, would be most vulnerable to adverse weather conditions and theft, which is not too different from other types of outdoor crop cultivators. The distinguishing factor with outdoor cannabis crops versus other types of outdoor crops is the federal illegality. For example, a cannabis farmer in Carpinteria, CA, was able to use his insurance policy with a payout in excess of $1 million after ash from
the 2017 southern California Thomas Fire destroyed thousands of his cannabis plants. Ash from the Thomas Fire seeped into the cannabis farmer’s greenhouse and contaminated the cannabis plants with toxic chemicals, which triggered the “atmospheric change” language in the insurance policy. This is the same exposure and the same coverage that applies to any other farm, nursery or orchard. The farmer accordingly filed a claim and received an insurance payout of more than $1 million. This may be the largest insurance payout given to a legal cannabis business to date.

In contrast, Delaware has not yet identified an insurer willing to write crop insurance for any Delaware cannabis growers. A cannabis farmer cannot get crop insurance in Delaware because he or she is growing cannabis and, consequently, it is considered “untouchable” per se. This difference between states illustrates that some insurers are treating cannabis businesses as regular commercial enterprises and are deciding to make a business risk decision, including financial and legal implications, to insure the cannabis industry, despite federal law differences, while in other states, some insurers are not ready to write insurance for the cannabis industry.

The cannabis industry is diverse in the type of insurance it needs from seed to sale. Crop failure and destruction can occur at the nursery and growth stage. Growing cannabis plants and keeping them healthy during the maturation phases is a laborious process. The cannabis is grown from its seedling stage in nurseries. It must be tended to by experienced cannabis farmers and growers and then harvested and trimmed (either by hand or machine). Even within the cannabis industry, there is great disparity between the sizes of companies and their operating and insurance needs. Crops can range from small craft batch cultivation to large scale nurseries. At the cultivation site alone, the types of insurance needed are different from the needs of a manufacturing site. One of the newest types of manufacturing sites is vertical integration locations where cannabis is grown and trimmed, and low-quality flowers are processed into oil and refined into shatter, wax or another concentrate through expensive machinery. Manufacturers will most likely want to insure these products. Once the cannabis product is in a consumable form, it is tested for contaminants and pesticides.

States often require some form of testing to ensure consumer protection. One bad test or pesticide report can make a crop or product completely unsafe and, therefore, unsellable. Many states have a track and trace system that records the movement of cannabis and cannabis products through the commercial supply chain. The cannabis plants are often tagged, and the packaging of cannabis products is marked with serial numbers to identify

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the chain of liability. This allows for the ease of pinpointing exactly where contamination occurred.

The ability to have insurance is critical, and these controls should make insurers confident that they can selectively underwrite this business. This ability to pinpoint exactly where the product contamination occurred helps to identify which cannabis producer should be accountable for a bad batch of cannabis products and, in turn, which insurer will be responsible for paying the claims.

As the cannabis industry continues to expand in states and U.S. territories, insurance availability lags behind the needs of the cannabis industry. Sectors of the cannabis industry that need to be insured include ancillary cannabis businesses, cannabis-infused product manufacturers, cannabis dispensaries, cannabis events, cannabis growers and harvesters, cannabis landlords, cannabis distributors and transporters, cannabis medical physicians, cannabis waste facilities, cyber liability, and more.

Insurance companies have hesitated to enter the admitted market due to little data, as well as the unknown risk factors. There is not only an increased need for insurance by the cannabis industry, but there is also a need for insurance with the roll-out of state and local licensing requirements. As regulations shift from being general to specific, many local and state licensing authorities require insurance. States such as California and Massachusetts require proof of insurance, such as a general liability policy, for cannabis business applicants seeking licensure from state and local jurisdictions.\footnote{14,15}

The risk tolerance differences between state regulatory systems can also be stark. For instance, to access a Delaware retail medical marijuana outlet, a patient must first enter a vestibule with locked doors on either end: one for ingress and the other egress. Patients are scanned in the vestibule when entering a facility. They must produce both a driver’s license (or other state ID) and their Medical Marijuana Program (MMP) card before gaining entrance to a second locked chamber. Once there, patients pass their same ID to the intake processor. Only after satisfying the intake specialist protocol, the patient gains admittance to the store itself. No electronics are permitted in a Delaware cannabis store. In states that have legalized cannabis, security concerns are a prime concern of retail operators. However, state insurance regulators’ security protocols differ for retail outlets.

\begin{footnotes}
\footnote{14. State of Massachusetts, Code of Massachusetts Regulations, Title 935, Cannabis Control Commission, Code of Massachusetts Regulations §§ 500.101(c)(5) and (6) and § 500.105(10).}
\footnote{15. State of California, Bureau of Cannabis Control Proposed Text of Regulations, California Code of Regulations Title 16, Division 42. Bureau of Cannabis Control Regulations §§ 5008, 5308, 5312, 5709.}
\end{footnotes}
As the size of the cannabis industry continues to increase, the need and the demand for insurance in the cannabis industry correspondingly increases. State insurance regulators will be forced to deal with the intersection of cannabis and insurance. They should be ready by educating themselves about the cannabis industry and the various types of insurance risks associated with it.

This white paper will focus on the federal, state and local authority; seed-to-sale operations; the type, scope and availability of coverage and insurance gaps; and regulatory best practices and recommendations. State insurance regulators, should they choose to do so, can play an important role in encouraging insurers to write insurance for the cannabis industry.

II. OVERVIEW OF KEY AUTHORITIES

A. FEDERAL AUTHORITY

Legalization of cannabis for any purpose is a topic that has been discussed and debated for decades. While cannabis was once prohibited nationwide, in the 1970s, 12 states either removed or reduced the penalties for possession of small amounts of cannabis.\(^{16}\) By the late 1970s, the momentum had stalled and would remain that way until the beginning of the 21\(^{st}\) century.

However, by 2018, 33 states; Washington, DC; and the territories of Guam and Puerto Rico had legalized the use of cannabis for medical reasons.\(^{17}\) Eleven states, and Washington, DC, now also permit the recreational use of cannabis.\(^{18}\) Certainly, the pendulum of public opinion has swung since the late 1970s, with fewer people seeing cannabis as harmful when compared to 20 years ago.\(^{19}\) While one reason for this change may be generational, public opinion has perhaps also been swayed by the rise in laws permitting the use of medical marijuana.

“Medical marijuana” refers to the use of cannabis, which may involve use of the entire plant or its extracts—most frequently, delta-9-tetrahydrocannabinol (THC) and/or cannabidiol (CBD)—as a physician-recommended form of medicine to treat symptoms of

\(^{16}\) Alaska, California, Colorado, Maine, Minnesota, Mississippi, Nebraska, New York, North Carolina, Ohio, Oregon and South Dakota. (South Dakota later reversed its decriminalization of the drug.)


illness and other conditions. By 2019, 12 states had enacted laws permitting the use of products rich in CBD, which does not have psychoactive effects. Currently, the U.S. Food and Drug Administration (FDA) has not recognized or approved the use of cannabis as medicine, due to its classification as a Schedule I substance under the federal Controlled Substances Act (CSA) of 1970. However, researchers continue to explore its possible uses for medical treatment. Now that hemp-derived CBD is legal, retailers continue to sell CBD products in all 50 states, claiming that they are derived from industrial hemp plants and, therefore, are legal. To date, this is a position that has received mixed treatment from the federal government.

While not addressing every law or regulation that may apply to cannabis-related businesses or consumption, the following section will illustrate the myriad of laws that may complement or contradict each other. As will be seen, the legal and regulatory framework governing cannabis is in a constant state of flux. This constant change has led to great uncertainty in the cannabis industry with regard to business operations throughout the industry.

Signed into law by President Richard Nixon on Oct. 27, 1970, the CSA is the federal U.S. drug policy under which the manufacture, importation, possession, use and distribution of certain narcotics, stimulants, depressants, hallucinogens, anabolic steroids and other chemicals are regulated. Any addition, deletion or change to schedule designation of a medicine or substance may be requested by the U.S. Drug Enforcement Agency (DEA), the U.S. Department of Health and Human Services (HHS), the FDA or from any other party via petition to the DEA.

The DEA implements the CSA and may prosecute violators of the laws set forth in the CSA at both the domestic and international level. Within the CSA, there are federal schedule designations (I–V) that are used to classify drugs based upon their:

- Abuse potential
- Accepted medical applications in the U.S.
- Safety and potential for addiction

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Cannabis is regulated as a Schedule I substance. Schedule I substances are those that have a high potential for abuse and for which there are currently no accepted medical uses in treatment in the U.S.  

At the federal level, the government’s authority to regulate and control cannabis can be broken into three distinct categories: 1) criminal; 2) administrative; and 3) civil. While these categories are not mutually exclusive and often overlap, conceptualizing the federal level of control in this way is helpful to understand how federal law regulates cannabis and interacts with state and local law. It is also important to bear in mind that the executive, legislative and judicial branches of the federal government all have a role to play in each of these categories, and often, each branch seems to take a different approach in the regulation and control of cannabis.

B. Federal Criminal Laws

As mentioned above, cannabis is a Schedule I drug for purposes of the CSA, which triggers certain other federal criminal statutes. Of primary concern for this section, cannabis’ prohibited status triggers three main federal criminal laws when individuals engage in transactions involving cannabis or proceeds from cannabis. The first, the federal Bank Secrecy Act (BSA), requires financial institutions to report to the Treasury Department any transactions over $5,000 that the institution knows, or has reason to know, involve assets derived from illegal sources. The penalty for a violation of the BSA is severe: up to a $250,000 civil penalty and up to five years in prison. Any transaction associated with a cannabis business must be reported under the BSA, even if that activity is legal under state law, and a violation of the BSA may result in a financial institution’s loss of its charter.

“Financial institution” is defined broadly and includes banks, credit unions, broker-dealers, insurance companies, pawnbrokers, travel agencies and a host of other institutions that may come into contact with assets derived from illegal sources. Because cannabis is a prohibited substance, any institution that transacts business with a cannabis or cannabis-related entity is subject to these reporting requirements. The penalty for a violation of the BSA is severe: up to a $250,000 civil penalty and up to five years in prison. Any transaction associated with a cannabis business must be reported under the BSA, even if that activity is legal under state law, and a violation of the BSA may result in a financial institution’s loss of its charter.

The second federal statute implicated in transactions involving cannabis is the money laundering statute. This statute makes it a felony for any person to engage in a financial transaction that the individual knows involves the proceeds of an unlawful activity. Because cannabis is a prohibited substance, any transaction that derives proceeds,

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directly or indirectly, from cannabis transactions could be considered money laundering for the purposes of the money laundering statute. The penalties for violating this statute are severe: up to a $500,000 civil penalty or twice the value of the property involved in the transaction, whichever is greater, and up to 20 years in prison.

The third federal statute implicated by cannabis transactions is the unlicensed money transmitter statute. Under this statute, it is a felony to engage in an unlicensed money transmitting business. The statute defines “unlicensed money transmitting business” to include a transaction that involves the transportation or transmission of funds that are known to have been derived from a criminal offense or are intended to be used to promote unlawful activity. Because of this definition, any transaction that involves the transmission or transportation of funds derived, directly or indirectly, from the cannabis industry is a violation of the unlicensed money transmitter statute and subjects the individual to up to five years’ imprisonment.

In enforcing these statutes, the executive branch has, on the one hand, been consistent and on the other hand inconsistent. Regarding clearly illegal cannabis activities, the executive branch has been consistent in its enforcement and prosecution of such activities. However, the executive branch has been less consistent in its treatment of cannabis in states where it has become legal. For example, in February 2014, then Deputy Attorney General James Cole issued a memorandum that announced guidance to U.S. Department of Justice (DOJ) attorneys on the Obama administration’s priorities in the prosecution of cannabis-related federal crimes. Intended to update federal guidance considering ongoing changes to state laws, it applied to all federal enforcement activity, both civil and criminal, in all states.

Noting that the DOJ had previously issued memoranda setting forth federal enforcement priorities in jurisdictions that authorized cannabis cultivation and distribution for medical use, Deputy Attorney General Cole concluded that, with some exceptions, the federal government would again exercise discretion in its enforcement determinations in jurisdictions that had implemented strong, effective regulatory and enforcement systems to control the cultivation, distribution, sale and possession of cannabis for industrial or recreational use. While noting that any cannabis transaction was prosecutable, the Cole

30. Continued priorities included preventing the distribution of marijuana to minors and preventing revenue from the sale of marijuana going to criminal enterprises.
Memorandum indicated that the DOJ would not actively seek to prosecute legalized cannabis transactions.

The exceptions to the Cole Memorandum were eight federal priorities for prosecution, including criminal enterprises, sale to minors, growing cannabis on public grounds, and preventing diversion of legal cannabis into states where cannabis was illegal. However, in January 2018, former Attorney General Jeff Sessions rescinded the Cole Memorandum by way of his own memorandum that emphasized the DOJ’s “well-established principles” with regard to the prosecution of cannabis crimes.\textsuperscript{31} While the memorandum did not specifically address legalized cannabis, it did indicate a return to a more active DOJ role in regulation and control of cannabis. The federal guidance previously issued by former Attorney General Sessions leaves financial institutions that now accept money from cannabis-related businesses potentially exposed to violations of federal law, including money laundering statutes. In 2019 Attorney General William Barr indicated he will not pursue cannabis businesses that are operating legally within their state jurisdiction.\textsuperscript{32} Insurers have no assurance that the Attorney General’s comments extend to financial institutions engaging with cannabis businesses, nor, is there any guarantee that this policy extends beyond the tenure of the Attorney General who made the statement. Insurers must assess a business risk decision, including legal risks and financial implications, about whether they will provide services to the cannabis industry.

The federal judiciary has been more consistent in its interpretation of the CSA and related cannabis prohibitions. The U.S. Supreme Court, in its landmark 2005 \textit{Gonzales v. Raich} opinion, reaffirmed the supremacy of the CSA over state legalization statutes.\textsuperscript{33} Since the \textit{Gonzales} decision, the judiciary has upheld criminal prosecutions involving cannabis transactions, even where legalized at the state level. To date, the Supreme Court has not expressed a willingness to revisit the \textit{Gonzales} decision. Similarly, lower federal courts have shown a reluctance to address the issue of state legalized cannabis.

In February 2018, a federal judge dismissed a lawsuit seeking to legalize cannabis under federal law. The plaintiffs in that suit argued that the CSA’s classification of cannabis as a Schedule I substance is unconstitutional and that the federal cannabis policies in the U.S. discriminate against minorities. In dismissing the suit, the judge found that the plaintiffs should first petition the DEA to ask that it be removed from the list of dangerous substances, as that agency, along with the FDA, oversees the classification and

\textsuperscript{31} U.S. Department of Justice, 2018. “Marijuana Enforcement.”
\textsuperscript{33} Gonzales v. Raich, 545 U.S. 1 (2005).

The legislative branch, however, has been ambivalent to state-legalized cannabis. In 2003, in the face of several states legalizing cannabis on some level, U.S. Rep. Maurice Hinchey (D-NY) brought an amendment to the House floor that would have prohibited the DOJ from expending funds to prosecute state-legalized medical cannabis operations.\footnote{35. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2004, H.R. 2799, H. Amdt. 297 (2003).} While this amendment would ultimately fail by a 152-273 vote, by 2014 the amendment was revived by U.S. Rep. Dana Rohrabacher (R-CA) and had been included as an amendment to the 2014 omnibus spending bill.\footnote{36. Commerce, Justice, Science, and Related Agencies Appropriations Act, 2015, H.R. 4660, H.Amdt.748 (2014).} Since the enactment of this amendment, Congress has reapproved it yearly in appropriations bills. Other legislative enactments, however, have seen less enthusiasm from Congress.

On June 7, 2018, U.S. Sen. Cory Gardner (R-CO) and U.S. Sen. Elizabeth Warren (D-MA) introduced the Strengthening the Tenth Amendment Through Entrusting States (STATES) Act (S. 3032 and H.R. 6043). The STATES Act was aimed at amending the CSA to exempt cannabis-related activities that were in accordance with state laws. It also sought to protect banks working with cannabis businesses and legalize at the federal level the cultivation of industrial hemp. As of June 2019, The STATES Act has been introduced this congressional session (S. 1028 and H.R. 2093).

In March 2019, the House Financial Services Committee voted in favor of advancing the SAFE Banking Act (H.R. 1595), which would allow cannabis businesses to work with banks and credit unions.\footnote{37. Congress.gov. Accessed at https://www.congress.gov/bill/116th-congress/house-bill/1595/all-actions?overview=closed#tabs.} It would bar federal regulators from terminating a bank’s FDIC deposit insurance, a threat that prevents most banks from accepting cannabis businesses. One of the greatest obstacles of entry for admitted market insurers is the threat of felonious liability under federal law. The SAFE Banking Act would remove some of the direct conflict between state and federal law barriers for insurer and broker participation in the cannabis market. As of June 2019, H.R. 1595 has been discharged from the Judiciary Committee. The bill’s advancement is a significant step for the cannabis industry. With the bill’s passage, it is likely that more banks would open their doors to cannabis businesses. In turn, cannabis businesses would be able to operate as normal businesses. The regulatory landscape of the cannabis industry is evolving rapidly.
Thus, it’s critical to stay up-to-date on federal and state cannabis-related legislation. Doing so ensures the insurance industry’s underwriting risk assessment and client policy advisement reflects recently passed laws.

Recent developments on both the federal and state levels support the notion that as the commercial investment and scientific research intersect with changing public attitudes about cannabis usage, the risk management portfolio of firms on the supply side will expand to meet market needs. With passage of the new Farm Bill in 2018, Congress moved to fully legalize hemp, opening the way for broad distribution of CBD products and creating the first cannabis market insurers may find to be a much more palatable risk. The United States Department of Agriculture (USDA) also subsequently issued a memorandum on new hemp authorities.

Driving demand is CBD, a non-psychoactive cannabinol that can be derived from hemp or cannabis. CBD is one of the substances in cannabis, but in hemp, it comes with no mind-altering effect from THC. Proponents say CBD helps relieve pain, anxiety, nausea and inflammation. Currently sold mostly online and in specialty shops, CBD can be found in oils, candies, capsules and even sparkling water. In June 2018, the FDA approved the first CBD-based medicine, Epidiolex, made by GW Pharmaceuticals to treat childhood epilepsy.


C. Federal Regulatory Level

At the federal regulatory level, state-legalized cannabis faces numerous challenges as individuals engaged in business in the cannabis industry attempt to navigate a host of complex federal regulatory regimes. While it is impossible to enumerate every point at which the cannabis industry interacts with federal regulatory regimes, some of these include banking, finance and insurance; securities; environmental protection; intellectual property; taxation; and agriculture, just to name a few.

D. Financial Services Sector

The first area of regulatory authority is in the financial services sector. As noted above, many of the criminal laws that are implicated by legalized cannabis are financially orientated, and lack of access to banking and financial services even in states where cannabis is legal is a significant issue. For example, in order to comply with the BSA, financial institutions must send Suspicious Activity Reports (SARs) to the Treasury Department when the institution is involved in a transaction involving funds over $5,000 that the institutions knows, or has reason to know, come from illegal sources, such as cannabis.40

Beyond mere compliance with federal criminal law, a host of other regulations complicate financial transactions involving legalized cannabis. For example, for financial institutions to be able to transmit funds electronically through the Federal Reserve’s electronic network, the institution must have a master account with the Federal Reserve. However, the Federal Reserve has been reluctant to provide master accounts to institutions that deal exclusively in legal cannabis due to the federal prohibition on cannabis, leaving such institutions without the ability to transmit money.41 There are exceptions such as Colorado, which has a limited scope and strict parameters, but it does have a Federal Reserve account. Even where cannabis businesses attempt to raise funds outside the ordinary banking system, federal regulations may pose a barrier. If a cannabis business seeks to raise capital through the issuance of securities, such securities must be registered by the U.S. Securities and Exchange Commission (SEC) unless the security falls within an exemption.42 It is unclear whether the SEC would approve such securities given the prohibited status of cannabis.

40. 31 CFR § 1020.320.
41. Fourth Corner Credit Union v. Federal Reserve Bank of Kansas City, 861 F.3d 1052 (10th Cir. 2017).
In response to these concerns, and in recognition of the Obama administration’s deprioritizing of criminal prosecution of cannabis-related businesses in cases where they are otherwise compliant with the laws of the state in which they are operating, on February 14, 2014, FinCEN issued its own guidance. This guidance was intended to clarify how financial institutions can provide services to such businesses while remaining compliant with their obligations under the BSA. It instructed financial institutions providing such services—when they reasonably believed, based on their due diligence, that a given business did not implicate the Cole Memorandum’s priorities or state law—to file a “Marijuana Limited” SAR. Further, a financial institution that reasonably believed a cannabis-related business was violating a Cole Memorandum priority or state law was instead instructed to file a “Marijuana Priority” SAR, and FinCEN’s guidance set forth the “red flags” that would suggest the business was engaged in such activity.\(^{43}\) Despite the guidance issued by Attorney General Sessions in 2018, FinCEN has stated that the structure set forth in its 2014 guidance remains in place.\(^{44}\) What FinCEN’s guidance did not and could not do, however, was amend federal law or grant immunity to a financial institution providing services to a cannabis-related business.

Despite FinCEN’s guidance, the number of financial institutions accepting this risk dropped slightly in the months that immediately followed its issuance. It has, however, grown steadily since then. According to FinCEN, by the end of March 2018, 411 banks and credit unions were “actively” operating accounts for marijuana-related businesses.\(^{45}\) States continue their attempts to navigate these murky waters between federal and state law. By way of example, in 2014, Colorado passed a law that would allow the formation of “cannabis credit co-ops.” These co-ops were to function similarly to a credit union and had restrictions on the number of businesses they could serve.\(^{46}\) Despite the passage of this bill, no co-ops have been formed under this law.\(^{47}\) Several other state initiatives have been introduced since.\(^{48}\) On July 3, 2018, the New York State Department of Financial Services published its own guidance to encourage banks and credit unions to offer services to marijuana-related businesses licensed by the state and advised them to continue to follow FinCEN’s 2014 guidance. Still, given the risk of not only losing their

\(^{43}\) Those subject to FinCEN’s regulations were still required to report currency transactions in connection with marijuana-related business the same as they otherwise would.


charter but also the threat of facing criminal prosecution for a federal offense, many financial institutions have been hesitant to embrace the cannabis business.

E. Intellectual Property

The cannabis industry faces other complications related to federal regulation. One example of this is in the area of intellectual property. As the cannabis industry has become legitimized, many cannabis businesses such as growers, distributors, and retailers have sought to protect their intellectual property in brand names, business names and similar identifiers. However, the U.S. Patent and Trade Office (USPTO) has historically taken the position that trademarks cannot be granted to applications promoting or involving illegal conduct. To date, the USPTO has not approved any filings for trademarks or copyrights for products related to cannabis. Interestingly, however, the USPTO has approved trademarks for certain cannabis derivatives. Specifically, the USPTO has approved trademarks for specific types of CBD products. As noted above, these approvals stemmed from confusion as to whether CBD was illegal under the CSA. This confusion has since been resolved. However, the CBD trademarks are still valid and still exist. Thus, while the USPTO has seemed to take a straightforward approach to the registration of cannabis trademarks, there is still some inconsistency in how the USPTO previously handled such trademarks.

F. Environmental and Agricultural Regulations

One last area of interest worth noting is the cannabis industry’s interaction with environmental and agricultural regulations. Cannabis, after all, is an agricultural product, which gives rise to environmental concerns. There are two key areas of concern at the federal level in this regard: 1) the federal Clean Water Act (CWA); and 2) the provision of water rights from federally administered facilities. The CWA regulates, in part, the pollution generated by agriculture operations. However, the CWA relies, in large part, on federal-state cooperation. The CWA is largely implemented at the state level using federal funds and grant projects. Given the prohibited status of cannabis at the federal level, it is unclear whether such grants would be available to states for cannabis remediation projects. Indeed, state programs aimed at environmental cleanup and


partnership with the cannabis industry have been subject to federal raids and subpoenas.\textsuperscript{51}

An additional agricultural concern arises regarding water rights and irrigation. In particular, regulatory complexities arise for cannabis growers in the western U.S., who must contend with the U.S. Bureau of Reclamation (USBR). The USBR is the largest wholesaler of water in the U.S. and provides one out of five western farmers with irrigation water.\textsuperscript{52} Because of the prohibited status of cannabis under the CSA, the USBR has issued guidance stating that it will not approve the use of its facilities for the cultivation of cannabis.\textsuperscript{53} As such, cannabis cultivators and growers may find it difficult to find the water sources necessary to support their growth operations.

G. Civil Level

At the civil level, the federal judiciary has created confusion as to civil obligations. This section will highlight two of significant importance: 1) the enforceability of contracts; and 2) the ability to declare bankruptcy. The enforceability of contracts brings questions on whether contracts involving cannabis transactions are void against public policy. Without guidance from the U.S. Supreme Court, lower courts have been left to address this issue as a matter of first impression.

In \textit{Tracy v. USAA Casualty Insurance Company}, the District Court for the District of Hawaii was asked to determine whether a contract of insurance was enforceable against an insurer in order to provide coverage for legal cannabis plants that had been lost during a fire.\textsuperscript{54} The Court in that case determined that since cannabis is illegal under the CSA, the Court would decline enforcing the contract on the grounds that it was against public policy. As such, no coverage was available under the policy. The opposite conclusion was reached in the District Court for the District of Colorado. In \textit{Green Earth Wellness Center, LLC v. Atain Specialty Insurance Company}, the Court was asked whether a policy of insurance could cover legal cannabis plants that were damaged due to a wildfire.\textsuperscript{55} In addressing the “void as against public policy” argument, the Court reasoned that over the years, the federal public policy had eroded; thus, there no longer existed a clear and consistent public policy against legalized cannabis. As such, the Court expressly declined to follow \textit{Tracy} and found that the contract of insurance provided coverage for legal cannabis plants. While there appears to be a trend of courts following \textit{Green Earth} as

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{54} Tracy v. USAA Casualty Insurance Company, No. 11-00487 LEK-KSC, 2012 WL 928186 (Mar. 16, 2012 D. Haw).
  \item \textsuperscript{55} Green Earth Wellness Center, LLC v. Atain Specialty Insurance Company, 163 F.Supp.3d 821 (D. Colo. 2016).
\end{itemize}
\end{footnotesize}
opposed to Tracy, until there is a definitive ruling on this issue by the Supreme Court, the enforceability of contracts involving cannabis will still be a point of contention.

One last area of concern at the civil level is the ability of cannabis-related businesses to declare bankruptcy. The ability of a business to seek bankruptcy protection is essential to a business when operations prove unsuccessful. However, this tool may not be available to cannabis-related businesses. In the case In re: Arenas, the 10th Circuit Court of Appeals was asked to determine the availability of bankruptcy protections for cannabis growers.56 In that case, after litigation returned a negative verdict against the cannabis growers, the growers sought bankruptcy protection. The U.S. Trustee objected to the bankruptcy, and the bankruptcy court dismissed the petition due to the criminal nature of the business. The 10th Circuit affirmed the dismissal, reasoning that since the substantial assets of the estate were cannabis, and since cannabis was illegal under federal law, the U.S. Trustee could not administer the bankruptcy estate without violating federal law.57 As such, the Court ruled that dismissal of the bankruptcy was permissible. As with the enforceability of contracts, until guidance is provided by the Supreme Court, there will be uncertainty as to whether bankruptcy protections are available to cannabis-related businesses. In addition, different states have distinctive laws allowed in bankruptcies, such as a homestead exemption, so there are no general bankruptcy laws applicable to all states.

H. McCarran-Ferguson Act

One of the areas unique to insurance is how the federal laws affecting cannabis interact with the federal McCarran-Ferguson Act.58 The McCarran-Ferguson Act precludes federal law from preempting state law regarding the business of insurance unless the federal law specifically relates to the business of insurance. Arguments have been made that because the CSA does not specifically apply to the business of insurance, state laws governing cannabis insurance are not preempted; therefore, states are free to engage the cannabis insurance industry without concern of federal liability.59 However, the nuances of how federal cannabis laws interact with the federal McCarran-Ferguson Act have not been clearly explored, and uncertainty still exists in this regard.

While it is true that the CSA does not specifically relate to the business of insurance, this, in and of itself, does not save a state statute regulating cannabis insurance from

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56. In re Arenas, 535 B.R. 845 (10th Cir. 2015).
57. See also, In re Rent-Rite Super Kegs West Ltd, 484 B.R. 799 (D. Colo. 2012) (Dismissing a Bankruptcy Petition Because Marijuana Remains Illegal Under the CSA).
preemption. While the fixing of rates, regulation of advertising of insurance policies, and the licensing of companies and their agents are clearly the business of insurance and, therefore, are not subject to preemption under the federal McCarran-Ferguson Act, other aspects of cannabis insurance regulation are not so clearly regulating the business of insurance as to prevent preemption. For example, the Supreme Court has held that priority provisions of state insolvency law, to the extent that they are attempting to provide for priority of payments beyond policyholders, are not saved from preemption under the federal McCarran-Ferguson Act. Thus, state insurance regulators may find that their authority to orderly liquidate an insurer may, to a greater or lesser extent, be preempted by the CSA.

Another example of where a state’s law may not be protected by the federal McCarran-Ferguson Act is in the field of corporate transactions. While the licensing of insurers is clearly protected by the federal McCarran-Ferguson Act, the Supreme Court has held that the SEC may unwind transactions that are in violation of federal securities law. Therefore, a state insurance regulator may approve a transaction involving a cannabis insurer only to see it unwound by the SEC on the grounds of illegality.

Putting aside the CSA, other federal laws directly affecting the cannabis insurance industry are clearly not protected by the federal McCarran-Ferguson Act. Specifically, the criminal statutes mentioned above (the BSA, the money laundering statutes and the unlicensed money transmitted statute) are all not subject to the anti-preemption provisions of the federal McCarran-Ferguson Act. This is because each of these laws specifically relates to the business of insurance. Each of these acts specifically defines financial institutions to include insurers; therefore, on the statutes’ face, the anti-preemption provisions of the federal McCarran-Ferguson Act do not apply. As such, the federal government may enforce these criminal provisions against both the industry and potentially state insurance regulators. Indeed, courts that have been faced with the question of whether the federal McCarran-Ferguson Act bars prosecution under these statutes have found no such bar to exist.

Despite issues at the federal level, states recognize the additional revenue that could be generated by the sale of cannabis, and those that currently have this income stream are using it to fund projects they may not otherwise have been able to afford. For example, Colorado is using the first $40 million of tax revenue to fund school construction costs, and Nevada intends to earmark 40% of its wholesale tax to the state’s Distributive School

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64. U.S. v. Blumeyer, 114 F.3d 758 (8th Cir. 1997); U.S. v. Cavin, 39 F.3d 1299 (5th Cir. 1994).
Account (DSA). Others intend to use the extra money to fund drug treatment and enforcement programs.65

The additional revenue, however, may not come without a cost. To balance public safety concerns with the rights of individual users, cities and towns are also beginning to regulate the use of medical and recreational cannabis. The myriad of local laws further complicates the landscape as evidenced by the attempt to summarize the specific policies for all 482 cities in the state of California.66 This summary serves to further illustrate the patchwork of laws and lack of uniformity with respect to this issue.

III. SEED-TO-SALE OPERATIONS—AN OVERVIEW AND ARCHITECTURE OF THE CANNABIS INDUSTRY

A. OVERVIEW

States have taken varying approaches to regulating the cannabis industry. While some states regulate medical and recreational cannabis separately, others have delegated authority to a single administrative agency. For example, Oregon has had a medical cannabis program since 1998 and a recreational program since 2016. The medical program is run by the Oregon Health Authority (OHA), which registers and regulates medical cannabis patients, medical cannabis growers, grow sites, processors, dispensaries and caregivers. OHA also promulgates cannabis testing rules. The recreational program is run by the Oregon Liquor Control Commission (OLCC), which licenses producers, wholesalers, processors, laboratories, retailers and researchers. The OLCC also issues permits for individual workers in the recreational cannabis industry.

In contrast, both medical and recreational cannabis in Colorado are regulated by the Colorado Department of Revenue (DOR). Medical cannabis was decriminalized through an amendment (Amendment 20) to the Colorado Constitution in 2000. Recreational cannabis was added in 2012 (Amendment 64).

Colorado and Oregon represent two versions—one separate and one unified—of the regulation of the cannabis industry. As cannabis remains illegal under federal law, individual states have, and increasingly are, legalizing parts of the cannabis industry and setting up regulatory structures unique to their respective states. It can be anticipated that


as these regulatory structures mature, there will be increased emphasis on unification and coordination to avoid regulatory pressure points caused by differing legal and regulatory schemes.

B. Cultivation

The cannabis cultivation component of the industry has developed along two paths: 1) a “cottage” industry of small-scale craft cultivation (i.e., cultivation for home and/or personal use); 2) and the development of large-scale producers engaged in cannabis as a commercial crop. There are further subdivisions between recreational and medicinal cannabis.

States typically allow residents to grow a limited number of home-grown cannabis plants for personal use, while registered medical and recreational cannabis caregivers can produce in greater quantities. Registered medical cannabis producers are often required by states to be vertically integrated in some way with the rest of the supply chain. For example, registered growers in Oregon must be designated by a patient to produce cannabis on their behalf. The patient may designate themselves or another person as their grower. There are 16,600 registered growers who are producing at 13,959 grow sites.

In Colorado, medical cannabis caregivers who cultivate more than 36 plants must register with the Colorado Department of Public Health and Environment and disclose: 1) the location of each cultivation; 2) the cannabis registration identification number for each patient they serve; and 3) any extended plant count numbers (patients with physician recommendations exceeding six plants and their patient registry numbers). As of December 2018, caregiver cultivation registrations numbered 1,963.

Medical marijuana cultivators (“optional premises cultivation” (OPC) or “grow” operations) in Colorado must be vertically integrated or associated with a licensed medical marijuana center (a business that sells medical cannabis to patients or primary caregivers, but is not, itself, a primary caregiver) or a licensed manufacturer who creates products infused

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67. Oregon residents are allowed up to four homegrown plants per residence. (ORS 475B.301) Colorado home grow laws allow no more than 12 plants in any residence. Counties and municipalities may have stricter laws in place. The plants must be kept in an enclosed, locked space and inaccessible to anyone under 21 years of age living in or outside of the residence. (Colorado Marijuana Official State Web Portal: www.colorado.gov/pacific/marijuana/home-grow-laws.
with medical cannabis intended for use/consumption other than by smoking.70 There were 673 licensed medical cannabis cultivation entities in Colorado in January 2019.71

In contrast to the medical cannabis grow operations, the recreational side shows significantly larger-scale operations. In Oregon, there are 1,108 licensed recreational producers who participate in some aspect of producing, cultivating, growing and drying cannabis. In Colorado, there were 735 recreational cultivation entities in January 2019. Although there was a similar number of medicinal cultivation entities, the monthly average ratio of cannabis plants cultivated as of June 30, 2018, was almost 3:1 recreational over medicinal.72

There are often more stringent limits on the amount of medical cannabis that can be produced as compared to the limits for recreational cannabis. For example, in Oregon, the largest non-grandfathered medical-only producer is limited to 48 mature plants.73 On the other hand, the largest-tier outdoor recreational producer is not limited by the number of plants and can produce on as much as 40,000 square feet of land.74 In Colorado, recreational cannabis cultivators can grow up to 1,800 plants at a time (Tier 1), and after one harvest season of sales, may seek authorization to grow more plants at progressive increments up to the tier in excess of 13,800 plants (Tier 5).75

C. Distribution, Manufacturing and Delivery/Transportation

States have taken varying approaches to licensing the distribution, manufacturing and transportation of cannabis products. In Oregon, wholesalers purchase cannabis from licensed producers (cultivators). They may dry, trim, arrange for lab testing, package, store and deliver cannabis to retailers. There are 139 licensed wholesalers in Oregon,76 Processors extract oils from cannabis plants and package them into vaporizers or vaporizer cartridges. Processors may also produce cannabinoid extracts and bulk oil used for manufacturing edibles or topical products. Edible manufacturers are required to obtain

73. ORS 475B.831.
74. OAR 845-025-2040.
a processor license. There are 204 licensed processors in Oregon, with three registered processors in the medical cannabis program.77,78

Colorado’s regulatory system is different in that a cultivation facility is licensed to cultivate, prepare and package recreational cannabis and sell it to retail stores, product manufacturing facilities or other retail cultivation facilities. Consequently, Colorado does not have a wholesaler category. However, it does have separate categorizations for medicinal and recreational manufacturers who concentrate and make products for consumption other than by smoking, including edibles, ointments and tinctures.79 There are 239 medical infused product manufacturers and 282 recreational product manufacturing facilities in Colorado as of January 2, 2019.80

In Oregon, an entity must be a licensed producer, wholesaler, processor, laboratory or retailer in order to transport cannabis. Wholesalers may provide transportation services to other licensees throughout the supply chain. Colorado’s structure provides for licensure of a transporter. A medical cannabis transporter is a person or business that transports medical cannabis from one business to another and may include the provision of logistics, distribution and storage of medical cannabis and manufactured medical cannabis products. There are 10 medical cannabis transporters licensed in Colorado. On the recreational side, there are 13 transporters licensed in Colorado.81

D. Retail and Consumers

Retailers sell items directly to consumers. Medical cannabis dispensaries receive cannabis, immature cannabis plants or cannabis products and transfer them to a patient or a patient’s caregiver. There are approximately five registered dispensaries in Oregon. Retailers are responsible for verifying the age of every customer for every purchase. Retailers may sell usable cannabis, cannabinoid products, cannabinoid extract or concentrate, immature plants, and cannabis seeds. There are 598 licensed recreational

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cannabis retailers in Oregon 82 and approximately 620 licensed cannabis retailers in California 83

In Colorado, as of November 1, 2018, there are 477 distinct licensed medical cannabis centers; of those, there are 413 unique licensees. There are 547 distinct licenses held for recreational retail stores; of those, there are 457 unique licensees. 84 There are several products available to the consumer, which fall under the flower and non-flower categories. In Oregon, cannabis flower represented 54.4% of recreational sales in 2018, followed by concentrate/extract at 29.4% and edible products at 10.3%. All other products represent roughly 6% of sales.

The flower also holds most of the market share in Colorado at 54.1% of recreational and 61.2% of medicinal use. 85 In 2015, the non-flower products were about 25% of total sales. In 2017, the non-flower products sales jumped to 37.7% of the regulated market. The non-flower products include concentrate, edibles and non-edibles.

<table>
<thead>
<tr>
<th>State</th>
<th>Flower</th>
<th>Extract/Concentrate</th>
<th>Edibles</th>
</tr>
</thead>
<tbody>
<tr>
<td>OR (2018)</td>
<td>54.4%</td>
<td>29.4%</td>
<td>10.3%</td>
</tr>
<tr>
<td>CO (2017)</td>
<td>54.1%</td>
<td>23.4%</td>
<td>13.4%</td>
</tr>
</tbody>
</table>

E. Testing

Testing is an important regulatory component in the cannabis supply chain. States that have legalized the use of cannabis generally require that product be tested by a lab before distribution to a dispensary and sale to the consumer. Labs use a variety of testing methods based on different products (oils, shatter, wax, edibles, topical products, etc.) in

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order to determine potency—the amount of THC, CBD and pesticide concentrations in the product. However, the testing and methodologies have not developed standardized metrics or methods, which leave these aspects open for future research.

All cannabis products in Oregon are required to be tested by a licensed laboratory before being sold to consumers. Laboratories test for contaminants, pesticides, solvents and potency. There are 23 licensed laboratories in Oregon. In Colorado, under both the recreational and medical cannabis laws, regulated cannabis must be tested in five categories: 1) microbials (bacteria and fungi); 2) mycotoxins (toxins produced by fungi); 3) residual solvents; 4) pesticides; and 5) potency. Licensed retail entities must submit samples of recreational cannabis and recreational cannabis products to a licensed testing facility for testing in the five categories. All medical cannabis products must be labeled with a list of all chemical additives that were used in the cultivation and production of a medical cannabis product. Persons holding a retail testing license may not have an interest in any other cannabis license, either recreational or medical. Currently, there are 11 each of testing facilities for medical and recreational cannabis in Colorado.

F. Tracking

Oregon and Colorado have several risk management requirements for cannabis-related businesses. Participants in the recreational and medical cannabis industries must use state-administered systems to track inventories throughout the production, processing, transportation, sale and testing of cannabis. Every plant is assigned a unique code and tracked through the supply chain in order to allow for more effective audits, to satisfy federal guidelines and to allow for product recalls when consumer safety issues are present.

G. Security

Most states require individuals who work in the cannabis industry to obtain some sort of license. The scope of the licensing laws may vary. For example, all employees who perform work on behalf of an Oregon licensed producer, processor, wholesaler or retailer—including, but not limited to, individuals who participate in the possession, securing, or selling of cannabis items—are required to possess a valid cannabis worker permit. In Colorado, all individuals who own or work for a licensed cannabis business

must pass a fingerprint-based criminal history background check and demonstrate Colorado residency and financial responsibility. Cannabis businesses must also document their funding sources and ownership structure.

In Colorado and Oregon, all entities in the cannabis supply chain are required to implement certain security precautions, including:

- Video cameras that produce 24/7 high-quality, non-light dependent recordings of all areas where cannabis items are present.
- Armed alarm systems.
- Panic buttons or the equivalent to call for emergency services.
- The ability to lock and secure cannabis items at all times.

### H. Existing Economic Impacts

The cannabis industry provides a significant source of jobs and tax revenue in states where it has been legalized. The market is characterized by steady growth. In jurisdictions where recreational cannabis was legalized after the legalization of medical cannabis, recreational production and sales have overtaken the medical side to be the dominant force in the market.

The legalization of cannabis provides employment opportunities directly within the cannabis industry, such as retail stores, dispensaries, cultivation, infused product manufacturing, transportation and laboratory testing. Additional ancillary jobs include security guards, construction and HVAC specialists, consulting, legal, and other business services. In Colorado, as of Nov. 1, 2018, there are 41,429 individuals licensed in the cannabis industry.\(^9^9\) There are 36,228 individuals licensed to work in Oregon.\(^9^0\) Considering worker turnover, economists estimate that about 12,500 individuals are employed at any one time.\(^9^1\)

States realize a significant increase in tax revenues from the sale of cannabis. For example, Colorado’s revenues from excise and sales tax increased 91.1% from 2014 to

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2015 and are expected to increase 23% by 2020 and surpass cigarette revenues. The tax, license and fee revenue for calendar year 2018 was almost $267 million.

In Oregon, $82 million in cannabis tax dollars were collected in FY 2018. This represents a 17% increase from FY 2017. Recreational cannabis tax revenue is expected to increase by another 34% by the 2019–2021 biennium. Since recreational cannabis became legal in Oregon in 2016, sales have steadily increased. Consumer sales in July 2018 were approximately $57.5 million, approximately 20% higher than the consumer sales in July 2017. Sales of all types of products—including edibles, extracts and usable cannabis—have steadily increased.

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96. Ibid.
In contrast, the number of medical cannabis growers, processors and dispensaries has declined sharply since 2016, when recreational cannabis was legalized in Oregon. There has been a significant amount of consolidation in the industry, which has led to frequent ownership changes and continuous business structure modifications.

Nationwide, the NAMIC Issue Analysis cites information from the Marijuana Business Daily in May 2017 that estimated demand for recreational cannabis approaches $45 billion to $50 billion compared to $106 billion for beer, $76.9 billion for cigarettes and $70.3 billion for nutraceuticals. Moreover, the NAMIC Issue Analysis summarizes:

In 2017, the legal medical and adult-use market reached $8.5 billion, according to the “State of Legal Marijuana Markets” executive report. The same report projects that the U.S. Cannabis market will reach $23.4 billion by 2022. Another report even likened the industry’s 25 percent compound growth rate through 2021 to cable television at 19 percent in the 1990s and broadband internet at 29 percent in the 2000s. Other reports project the industry would reach as much as $50 billion by 2026 if marijuana were legalized at the federal level.

In addition, medical and adult use retail cannabis tax revenues

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97. From October 2015 to October 2018, the number of growers dropped from 48,699 to 16,600. From October 2016 to October 2018, the number of processing sites dropped from 117 to three, and the number of dispensaries dropped from 46 to five. Oregon Health Authority, October 2015, 2016 and 2018. Oregon Medical Marijuana Program Statistical Snapshot, accessed at www.oregon.gov/oha/PH/DISEASECONDITIONS/CHRONICDISEASE/MEDICALMARIJUANAPROGRAM/Pages/data.aspx.


topped $645 million in 2017 and are expected to hit $2.3 billion in 2020.100

IV. TYPE, SCOPE, AND AVAILABILITY OF COVERAGE AND INSURANCE GAPS

A. INTRODUCTION

The cannabis industry can be broken down into multiple segments. This includes cultivation, processors/harvesters, manufacturing, retail distribution, testing labs, and microbusinesses or affiliated businesses (e.g., construction, security, cargo/transportation companies). While each of these segments is unique and require insurance products specific to their type of business, there are coverages that apply to all the business segments. These coverages include, but are not limited to, general liability, workers’ compensation, product liability, and property insurance.

There are a few admitted insurers issuing policies in the cannabis industry, and they are treating cannabis businesses as “regular” businesses despite the federal illegality of the product. One exception to this statement is workers’ compensation. Some states—including Colorado, Oregon and California—include a workers’ compensation market of last resort through a state-admitted carrier for this coverage. However, most other available insurance products for the cannabis industry are currently insured through the non-admitted (surplus lines) market.

The primary challenge in engaging admitted insurers in many states to write any coverage type is the requirement of a “lawful purpose.” Under general law, any contract or agreement entered for an illegal purpose is not legally binding. Because cannabis continues to be illegal at the federal level, the argument is made that there can be no legal contract or insurance policy. There are legislative efforts underway at both the federal and state level to address this conundrum of legality in a state and illegality at the federal level.101

Moving toward an admitted market for cannabis business insurance is a key objective for states that have legalized. This is a rapidly changing area with businesses seeking admitted coverage but only able to find coverage in the non-admitted market. As the


101. See discussion at p. 24.
cannabis industry develops, their insurance needs become more sophisticated and differentiated.

The chart below is intended to provide examples on the needs of the industry ranging from general coverages anticipated for all cannabis businesses to those more specialized for various business segments, such as testing labs.

### Sample General Insurance Needs for Cannabis Industry (Product Liability)

- Business Owners Policy Programs
- Commercial General Liability
- Premises Liability
- Products/Completed Operations Coverage

### Sample Specialized Coverage Needs by Business Segments

<table>
<thead>
<tr>
<th>Cultivation</th>
<th>Processors/Manufacturers</th>
<th>Testing Labs</th>
<th>Distribution</th>
<th>Retail</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crop Insurance</td>
<td>Equipment Breakdown</td>
<td>Equipment Breakdown</td>
<td>Automobile Liability</td>
<td>Employment Practices</td>
</tr>
<tr>
<td>Equipment Breakdown</td>
<td>Errors and Omissions</td>
<td>Errors and Omissions</td>
<td>Cargo</td>
<td>Directors and Officers</td>
</tr>
<tr>
<td>Earthquake/Volcanic Eruption/Sprinkler Leakage</td>
<td>Directors and Officers Liability</td>
<td>Directors and Officers Liability</td>
<td>Liability</td>
<td>Liability</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Employee Theft</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Crime Insurance</td>
</tr>
</tbody>
</table>
Other Potential Insurance Needs

- Lessor’s Risk
- Medical Professional Liability
- Surety Bonds

B. How Insurers Determine Cannabis Rates

The cannabis insurance market is presently expanding with insurers emerging onto the admitted market. These insurers are submitting rate filings for regulated products, which allows state insurance regulators to gain insights into the types of coverages and design ratemaking approaches with respect to the coverage filings. Preliminary reviews of recent admitted-market filings suggest that policies and coverages offered to cannabis-oriented operations are similar to those provided to other non-cannabis businesses, including various limit and deductible options that are routinely offered in the commercial insurance marketplace. As the cannabis insurance market continues to grow the types of coverage and options do as well.

a. General Observations Regarding Cannabis Insurance Rates

Optional coverages such as earthquake, terrorism and sprinkler leakage are generally available at an additional premium to insureds who elect these coverages. Both rates and minimum premiums can vary on the basis of the nature of the risk (e.g., the classification of the insured as a store, dispensary, grower, warehouse, distributor, and whether the insured grows the product solely for its own use or for sale to other businesses) and the territory (as defined by the insurer in its rating plan). Possible segments include, but are not necessarily limited to, the following: 1) store/dispensary; 2) indoor cultivation; 3) outdoor cultivation; and 4) manufacturing/processing.

Exposure bases for loss costs can be either sales or payroll, as appropriate, based on the coverage and the business operations. For multiplicative increased-limits factors (ILFs), lower factors apply to lower limits of coverage; higher factors apply to higher limits. Claims-made policies are available, with options to choose retroactive dates and extended reporting periods. The further back the retroactive date is in the past, the larger the premium. Premiums for extended reporting periods are determined as percentages of the annual premium.
Schedule rating is often available to adjust the manual rates up to +/- 25%, and in infrequent cases up to +/- 40% (also depending on allowable schedule-rating constraints pursuant to the laws of individual states). Some cannabis-specific characteristics that some insurers use in schedule rating include: 1) number and type of cannabis licenses; 2) depth of experience in cannabis operations; and 3) the use of blockchain, including Hyperledger, technology in processing, distribution and retail transactions.

Some rates may be premised on certain packages of coverages being mandatory. For instance, some insurers may require a package of general liability and property coverages to be purchased together, while other coverages—e.g., product liability, crime, earthquake, sprinkler leakage or terrorism—may be optional.

Package discounts for property and liability coverages together may be available, along with multi-policy credits. Rates may be affected by the owner's years of experience and financial position. New ventures may be significantly surcharged, as may inexperienced business owners or insureds with prior bankruptcies.

Rates may also depend on the following attributes: 1) presence of video surveillance; 2) use of locked display/storage cases; 3) use of flammable solvents, tinctures and/or hash oil; 4) local surroundings, including traffic volume and proximity to police services; and 5) the selection and training of employees. Rates may also be premised on the business complying with certain requirements, such as background checks on employees.

b. Businessowners' Policy (BOP) Programs

Classification relativities for various businesses are often derived from existing proxy classifications. For instance, some insurers have noted the following similarities in their filed rating plans:

- Distributors have similarities to warehouses and wholesale businesses, such as baked goods, tobacco, and grocery.
- Testing labs have similarities to businesses specializing in scientific tools and instruments and dental labs.
- Dispensaries have similarities to other retail stores, such as drug stores and tobacco stores.
- Manufacturers have similarities to other small business operation/manufacturing exposures, such as bakeries (no restaurant) and beverage stores (no liquor).
c. Commercial General Liability (CGL) Insurance

Many CGL exposures can be rated with gross sales as the exposure base. However, certain classifications pertaining to transportation and/or distribution may be rated based on payroll, while classifications pertaining to subcontracted work may be rated based on the cost of that work. Within a schedule-rating plan, underwriters may consider such criteria of individual risks as: 1) the experience of the management; 2) internal controls; 3) structural features and condition of the building; 4) compliance with safety protocols; 5) types of equipment; and 6) the selection, training and experience of employees.

Loss costs for liability coverages and related endorsements are affected by:

- Applicable limitations on territories.
- Requirements for persons on premises to be escorted by employees.
- Hours of operation.
- Customer age restrictions.
- Type of exit packaging.
- Advertising injury liability, which is affected by restrictions on marketing to youthful persons.
- Requirements for security guards and protective devices. For instance, rates may be affected by: 1) employing state-certified security guards; 2) whether they are employees or subcontractors; and 3) whether they are armed or unarmed.

d. Premises/Operations Coverage

Premises or operations coverage can be rated by area of building. Possible hybrid exposure bases would be the square footage if the building area is smaller and gross sales if the building area is larger. Deductibles per occurrence are often available. The potential for inhalation/exposure liability is likely to be higher than for other typical properties and would be reflected in rates accordingly.

e. Products/Completed Operations Coverage

For products or completed operations coverage, gross sales are a possible exposure base. Rates vary by type of operation; e.g., medical dispensaries may be charged different rates from retail stores. Deductibles per occurrence are often available. There may be a default deductible, and further discounts could apply for the selection of higher deductibles.
f. Optional Coverages for Businessowners’ and/or Commercial General Liability Programs

In exchange for additional premiums, the following optional coverages may be available:

- Coverage for risks arising from employment of security guards (rated based on payroll/cost of security guards).
- Hired and non-owned automobile coverage (may be available for flat additional premiums).
- Assault and battery coverage (premium for various sublimits may be calculated as a percentage of the main commercial general liability coverage premium, with variation based on whether defense coverage is within or outside the policy limits).
- Terrorism (federal Terrorism Risk Insurance Act [TRIA]) coverage (premium may be calculated as a percentage of the main commercial general liability coverage premium).
- Waiver of subrogation (may be available for flat additional premium).
- Product withdrawal expense coverage (may be available for flat premium charges, based on the limit of coverage, with deductibles per occurrence set as dollar amounts and/or percentages of the limit of coverage).
- Special event coverage, which may be considered short-term coverage for which premium is fully earned. Premiums may vary depending on the type of event and may be proportional to the duration of the special event in days. Special events may include trade shows, fairs and music festivals. Rates vary based on the perceived level of hazard, which may be categorized as low, moderate or high. Event history, on-site security and limitations on consumer access are all factors taken into consideration.

g. Crime Insurance

Coverages for employee dishonesty, money and securities, and counterfeit money are highly affected by the current cash nature of the business. Rating is highly variable accordingly, with the potential for high premiums to be set. Several large brokerages have represented that the theft hazard is the most significant among the risks faced by cannabis-related businesses today.
h. Crop Insurance

Crop insurance availability is a significant issue because federal crop insurance is not offered for cannabis crops. Private crop insurance for cannabis-related operations is also virtually impossible to secure. Insurers do not wish to cover any product that crosses state lines, due to fear of federal involvement. Accordingly, information regarding rates for crop insurance for cannabis is extremely limited.

i. Earthquake/Volcanic Eruption/Sprinkler Leakage Insurance

Coverages pertaining to the perils of earthquake or volcanic eruption can be purchased via an endorsement to a commercial property policy. Rates are often developed per dollar amount of insured exposure.

j. Lessor’s Risk Insurance

Special rates for lessor’s risk insurance are often applicable if the cannabis occupancy is more than a certain threshold of the property (e.g., more than 25%). Otherwise, the exposure is just rated on the standard policy. Rating appears to follow the approach used in insurers’ standard lessors’ risk programs. Cannabis factors are higher than for regular mercantile operations, ranging from +80% to +200% over standard mercantile rates. Categories include dispensaries, retail, medicinal, labs, product manufacturer, infused products, oil extraction and cultivation/grower. Additional schedule rating may apply to manual rates, with +/-25% maximum schedule-rated credits or debits.

k. Medical Professional Liability (Medical Malpractice) Insurance

Many traditional medical professional liability policies may exclude liability for recommended prescription of controlled substances. Accordingly, practitioners who prescribe or recommend medical cannabis to patients may seek special coverage limited to liability losses arising from prescription, recommendation or failure to prescribe or recommend medical cannabis. Coverage limits for such policies resemble those of traditional medical professional liability policies; the base limit is often $1 million per occurrence/$3 million annual aggregate. Rates are derived based on traditional medical professional liability policies in a given jurisdiction. Base-rate adjustments reflect a focus

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102. The DEA Practitioner’s manual indicates that all drugs listed in Schedule I have no currently accepted medical use in treatment in the United States and therefore may not be prescribed, administered, or dispensed for medical use,” some states are using the terms “prescribe” or “prescription” rather than “recommend” or “recommendation” in their statutes with respect to cannabis. Therefore, both terms “prescribe” or “prescription” and “recommend” or “recommendation” are used in this section. See https://www.deadiversion.usdoj.gov/pubs/manuals/pract/section2.htm
on claims arising from medical cannabis. Otherwise, classification plans may follow those filed for traditional medical professional liability insurance products.

An insurer’s actuaries may estimate, often with historical data as a reference where available (although such historical data may be sparse), the proportion of medical cannabis-related losses to total medical professional liability losses and adjust the loss costs implied in the traditional medical professional liability policy rates accordingly. Afterward, the loss costs could be adjusted by a typically multiplicative load to reflect the insurer’s expenses and targeted profit provision. It is possible that data related to frequency and severity of medication errors could be used as a proxy for data related to medical cannabis-related losses. This could result in a conservative estimate of loss costs because medication errors are a broader category.

I. Product Liability

The available programs for product liability insurance are often on a claims-made basis. Loss costs may vary between “producer” and “retail” classes. Producers include cultivators, growers and manufacturers, while the retail class includes distributors. Cultivator-only licensees receive a discount (sometimes substantial) from general producer rates.

Rating factors can relate to:

- Compliance with testing protocols.
- Operational maturity of the business.
- Management experience in the industry.
- Presence of a compliance officer.
- Compliance with packaging standards.
- Counterfeit products.
- Cleanliness of water supply.
- Location of suppliers.
- Use of petroleum gases during the extraction process.
- Existence of prior product recalls or regulatory infractions.
- Existence and quality of documentation of standard operating protocols.
- Whether the product needs to be applied topically or is vaporized.
m. Property Insurance

Premiums for property insurance may vary by type of covered property and the coverages purchased; e.g., building, business personal property, stock, business income/extra expense. Some insurers may require insureds who wish to purchase property coverage to also purchase general liability coverage. The insured may have an option to include or exclude coverage resulting from the peril of theft. Premium, including the minimum premium, may vary based on that selection.

Rates may be set proportionally to the insured value of the property. For plants before harvest, coverage limits may be set per plant and may vary based on the developmental stage of the plant; e.g., cloned/pre-vegetative, vegetative, pre-flowering, and flowering. For harvested plants, coverage limits may be set up to a fixed dollar amount per unit of weight (e.g., per pound). Coverage may also be available for the replacement cost of unplanted seeds. Additional property coverages may be purchased for: 1) money and securities; 2) accounts receivable; 3) personal effects; 4) valuable papers; 5) property of others; 6) signs; 7) tenant glass; 8) robbery and safe burglary; and 9) loss arising from employee dishonesty.

Loss costs for property coverages and related endorsements are often affected by the following considerations:

- Applicable limitations on territories where owned property is located; e.g., no out-of-state coverage.
- Ordinances/laws requiring cannabis businesses to make improvements to properties.
- Theft exclusions.
- Natural disasters, which could affect business interruption/loss of income coverages.
- Legal requirements applicable to tracking of inventory.
- Exposure to fungus.

n. Surety Bonds

The rating structure for surety bonds may use multiple tiers, determined based on such characteristics as commercial credit score, business experience, risk-management programs and prior regulatory actions. Rates may range between 2% to 10% of the bond amount, depending on tier. Additional schedule rating with variation up to +/-25% is available, with some insurers selecting a narrower range of variation in schedule-rated credits and debits.
C. Gaps in Coverage

Cannabis insurance is still relatively new to both the surplus and admitted market and the cannabis industry is constantly evolving and changing. With regulations and new laws being implemented at the federal, state, and local levels the way that the cannabis industry cultivates, manufactures, distributes, sells, and is consumed changes daily. The adequacy of coverage can change substantially in a short amount of time. For example, the price of cannabis can increase and decrease quickly and change for different regional areas. Therefore, a sufficient level of loss protection for the asset of cannabis will change. The quantitative measurement in the adequacy of coverage is in constant change especially with the cannabis industry evolving with innovation. For example, new strains of cannabis are being cultivated and new technology for vape pens for ease and increased consumption are emerging at a rapid pace. With new products emerging daily, it’s difficult for insurers to not only assess the risk; but, also provide policies that meet the cannabis industry’s needs. In addition, insurers are looking for data to determine the risk associated with cannabis to fill the gaps in coverage. But, with little to no data in areas such as drug-free workplace standard procedures or auto insurers impacted by the current inability to test for cannabis intoxication of drivers, insurers are finding it difficult to fulfill all insurance coverage needs in the cannabis industry. The lack of data creates an unknown which in turn creates gaps. It is difficult for insurance to keep up with the demands of such a bourgeoning industry.

V. BEST PRACTICES AND RECOMMENDATIONS

A. EDUCATION, OUTREACH AND PUBLIC COMMUNICATION

Understanding the various facets of the cannabis industry is critical to learning about its insurance needs. Educational site visits to the different types of cannabis business operations (such as cultivation sites, manufacturing companies, distribution companies, testing labs and retail operations) should help state insurance regulators understand how the cannabis products are regulated on a state and local level. They will also assist in identifying where the areas of risk are decreased/increased throughout the supply chain.

Another educational avenue available to most regulators is reaching out to the cannabis industry trade associations, such as the National Cannabis Industry Association (NCIA), or a state trade association, such as the California Cannabis Industry Association (CCIA) as well as insurance trade associations. Many of the cannabis trade associations have insurance subgroups that meet and discuss matters related to the topics of insurance availability, gaps and emerging trends in the cannabis insurance space. Insurance trade
associations are able to identify and work with their individual insurer members to encourage writing cannabis insurance products. Reaching out to both the cannabis and insurance trade associations is a helpful way to begin a dialogue about the importance of cannabis insurance and the presence of the state insurance regulator.

State insurance regulator participation in various outreach events is another option to learn more about the cannabis industry and teach the cannabis industry about insurance. Interacting with other state insurance regulators and stakeholders at conferences, workshops and meetings can also be beneficial. Doing so provides information on how the cannabis insurance intersects with other state insurance departments and entities, such as state cannabis licensing agencies. It also allows for more information on the various supply chain risks.

B. Dedicated Internal Infrastructure and Resources

State insurance departments should have a web page or outreach materials dedicated to providing information and answering commonly asked questions regarding cannabis insurance coverage. In addition to a web page, it is advisable to have an in-house subject-matter expert (SME) on the issue of cannabis insurance. This expert can help bridge the gaps between state insurance department staff, the cannabis industry and the insurance industry. At a minimum, each insurance department should have a point of contact to guide interested parties in reaching the appropriate department staff. Additionally, departments should identify an internal team across the department to ensure all critical players of the process are engaged and understand the various issues or goals. This also helps to streamline needed answers or resources to insurers interested in writing cannabis insurance.

C. Monitoring the Market and Gap Analysis

As the degree to which insurers are meeting the coverage needs of cannabis businesses continues to evolve, it would be useful for regulators and policy makers to have up to date information on the types of coverages available in each state and gaps in the market. State insurance departments could survey carriers and producers on the types of policies available in their state, and this information could be aggregated and posted on the NAIC website.

D. California’s Path to Approving Admitted Carriers

California was the first state to approve admitted insurance carriers for cannabis-based businesses in the cannabis industry. Through education and outreach the California
Department of Insurance (CDI) laid the groundwork for cannabis insurance on the admitted market. As of the publication of this white paper, the CDI had approved six carriers. It launched the Cannabis Insurance Initiative (Initiative) in 2017 in anticipation of the insurance industry’s role in the legalization of cannabis for adult recreational use, which took effect on January 1, 2018 with the passage of Proposition 64. The first phase of the Initiative focused on education and outreach in order to develop the CDI and insurers’ understanding of the cannabis industry. The goal was to ensure the availability of insurance products for the cannabis industry by identifying challenges, opportunities, and solutions.

The CDI encouraged insurers to write on the admitted market by bringing them together in a meeting with leaders in the cannabis industry. The meeting focused on educating insurers about the cannabis industry and its insurance needs. The cannabis industry discussed issues they faced with finding and obtaining insurance. Insurers were able to ask questions and have an open discussion.

Subsequently, the insurer meeting participants were invited to a tour of an indoor grow, dispensary and manufacturing facility in San Jose, California. This allowed insurers to witness first-hand the sophistication, risk management, regulatory oversight, professionalism and transparency of the cannabis industry and the opportunities for the insurance industry. This further allowed the insurance industry to gain a better understanding of the cannabis industry and its insurance needs, while addressing questions and concerns.

The CDI continued educational efforts to bridge the gap between the cannabis and insurance industries on a larger stage by hosting a public hearing in Los Angeles, California in October 2017. The hearing was co-hosted by the California Cannabis Industry Association (CCIA) and the LA Cannabis Task Force. Hundreds of participants attended to hear cannabis businesses and the insurance industry provide their respective perspectives on cannabis insurance gaps. The public hearing revealed that while there was some insurance availability from surplus lines insurers, insurance was limited in scope and the California market would benefit from the entrance of admitted commercial carriers.

In addition to education and outreach efforts, CDI implemented operational procedures within the department to facilitate approval of admitted insurers for the cannabis industry. An in-house cannabis insurance SME was designated to lead the Initiative and serve as the primary point of contact to stakeholders. An internal cross-departmental team, which included rate filing and legal staff, also served respective roles to reach the goal of product availability. A website with key resources and contacts for the Initiative was launched.
Through these resources, interested stakeholders and insurers can immediately identify an entry point to the CDI on cannabis insurance, as well as educational materials and upcoming events.

These efforts by the CDI led to the filing and approval of the first admitted commercial insurance company to offer coverage to cannabis business owners in November 2017. This was just months away from the January 1, 2018 legalization of adult cannabis use. Golden Bear Insurance Company was the first insurance company in California to write insurance on the admitted market.

Since the first filing and approval, five additional admitted market insurance companies have followed suit. Additionally, in 2018, the American Association of Insurance Services (AAIS) designed the new Cannabis Business Owners Policy (CannaBOP) for cannabis dispensaries, storage facilities, processors, manufacturers, distributors, and other cannabis-related businesses operating in the state. CannaBOP is the first-of-its-kind standardized cannabis policy form that was approved by CDI.

E. Industry Trends and Policy Engagement

Given federal laws, such as the CSA and Banking Secrecy Act/Anti-Money Laundering Law, various industries (including insurance) are hesitant to engage in the cannabis supply chain. They fear exposure to criminal or civil liability. Policy changes at the federal level could play a critical role in encouraging more admitted insurers to write cannabis insurance.

Despite existing laws that may deter regulators, there has been an increase in federal legislative efforts to provide states greater regulatory authority over cannabis businesses without federal interference. Currently, the Rohrabacher-Blumenauer amendment, which prevents the DOJ from spending funds on prosecuting cannabis businesses in states that have medical cannabis laws, was extended through a federal spending bill. As mentioned above, the STATES Act, if passed, would allow states to regulate cannabis without federal interference.

However, as the cannabis industry continues to expand, there is a degree of uncertainty under President Trump and his administration. Former Attorney General Sessions had a longstanding public opposition toward the cannabis industry and actively removed

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protections. Recently appointed Attorney General Barr has indicated that he will not go after states that have legalized cannabis.¹⁰⁴

Many operators in the cannabis industry are willing to move forward despite these actions; but, such activities at the federal level also worried others outside of the cannabis space about the industry’s stability. President Trump repudiated former Attorney General Sessions’ rescission of the Cole Memorandum based on a request from U.S. Sen. Cory Gardner (R-CO), but the rescission nonetheless influenced business decisions such as offering insurance to the industry.¹⁰⁵ The change in the attorney general presents a new opportunity for the DOJ to clarify the administration’s position on state-legalized cannabis. However, it is too soon to tell what Attorney General Barr’s priorities will be with respect to the cannabis industry other than his public statements that he will not pursue state-legalized cannabis businesses.

With new regulations, rising consumer demands and the market landscape constantly changing, the cannabis business is booming and needs insurance protections in the cannabis industry. As such, state insurance regulators should follow the legislative landscape and impacts related to the cannabis industry. Policy changes at the federal level may influence the readiness of admitted insurers to write cannabis insurance. Thus, knowledge of the environment may guide insurance departments in their preparation for potential filings.

Collaboration with federal, state, and local entities may also serve to address barriers that prohibit access to insurance protection for cannabis business owners. With the deep knowledge of insurance issues, state insurance regulators can and should contribute their subject matter expertise and perspectives in these public policy discussions. Federal, state, and local entities may find it helpful to identify staff to address specific departmental and outreach needs. Additionally, state insurance regulators may sponsor legislation related to cannabis insurance. They may also further engage in policy-making by offering support for legislation addressing barriers.


VI. CONCLUSIONS

As more states continue to legalize cannabis, the need and demand for cannabis insurance will only continue to increase. There are substantial gaps in insurance coverage for the cannabis industry, which means that consumers, workers, vendors, owners and investors face risks that are not covered as they interact or engage with the cannabis industry. It is important for state insurance regulators to understand and address insurance availability and coverage gaps in their markets. State insurance regulators who have encouraged insurers to cover the cannabis industry have been successful in getting more insurers to enter this market. State insurance regulators can play a critically important role in working with the insurance industry to encourage more insurance availability for the cannabis industry.
ADDITIONAL CANNABIS INFORMATIONAL RESOURCES

- Americans for Safe Access: https://www.safeaccessnow.org/
- Cannabis Business Times: https://www.cannabisbusinesstimes.com/
- Cannabis Now: https://cannabisnow.com/
- Drug Policy Alliance: http://www.drugpolicy.org/
- Global Commission on Drug Policy: http://www.globalcommissionondrugs.org/
- Law Enforcement Action Partnership: https://lawenforcementactionpartnership.org/
- National Cannabis Industry Association: https://thecannabisindustry.org/
- Patients out of Time: https://www.medicalcannabis.com/
- Smart Approaches to Marijuana: https://learnaboutsam.org/
- Students for Sensible Drug Policy: https://ssdp.org/
- Transform Drug Policy Foundation: https://transformdrugs.org/
- Veterans for Cannabis: http://www.vfcusa.com/
- White House, Office of National Drug Control Policy- Marijuana: https://www.whitehouse.gov/ondcp/key-issues/marijuana/
THERE'S BEEN A DISASTER - WHAT SHOULD I DO NOW?
Learn more in the sections described below.

SAFE AND SOUND
After a disaster hits, make sure you and your family are safe. Then secure your belongings. Do what you can to secure your home and property to prevent more damage or theft. For example, if windows are broken, board them up. If the roof has a few holes, cover it with a tarp to prevent water damage.

REPORT A CLAIM
Once you’ve determined your home is damaged and needs to be repaired or rebuilt, report or file a claim as soon as possible. The easiest way to report a claim is to call your insurance company or agent. You may be able to report or file a claim online or from your cell phone. If you have trouble finding a phone number, try searching for your insurance company online.

ESTIMATE DAMAGE
An insurance adjuster will figure out how much damage was done to your home and property. The adjuster will ask you for a home inventory (a list of your personal property) if your personal belongings were damaged or destroyed. The adjuster will visit your home to inspect and estimate the damage done. In this section, you can learn about the different types of adjusters who may work on your claim and what you should do to prepare to meet the adjuster.

DETERMINE COVERAGE
Once the adjuster has figured out how much it will cost to rebuild, repair or replace your home or property, the adjuster will review your policy to calculate how much the insurance company will pay. If you’ve never filed a claim before, this process can seem overwhelming. But you can read this section to learn how claim payments are calculated and how your coverage will impact what your insurance company pays. You can learn the meaning of some of the words insurance companies use.

REBUILD, REPAIR AND REPLACE
Your recovery from a disaster is not complete until you’re living back in your home. During the recovery phase, you’ll be replacing personal items (if damaged), choosing building materials and working with contractors. Read this section to find tips about working with contractors and how to avoid becoming a victim of fraud.

PREPARE
It may sound strange, but the recovery process is the best time to start preparing for the next disaster or claim. Create a home inventory list as you’re replacing your belongings. Also as you’re rebuilding, consider using building materials that will resist damage – so if there’s another disaster, your home may have less damage. For example, you could use impact-resistant shingles or impact-resistant siding.
PROPERTY INSURANCE CLAIMS GUIDE

Disasters happen everywhere and can happen at any time. Any of the following can cause a significant amount of damage to homes and personal property:

- TORNADOES
- WILDFIRES
- HURRICANES
- FLOODS
- EARTHQUAKE

This might be the first time you’ve had an insurance claim—or maybe a claim this big.

This Guide will help you understand what to do after a natural disaster damages your home. It also gives you helpful tools and tips to navigate the insurance claims process, whether this is your first insurance claim or not.

This Guide provides general information to help you in any type of disaster. But remember, most policies won’t cover damage from floods or earthquakes unless you bought that coverage separately.

Your state insurance department will help you and answer any questions—free of charge.

SAFE AND SOUND

A disaster has hit my area and my home has been damaged. I’ve made sure my family is safe. What should I do next?

Make sure there are no safety issues like downed electrical lines or broken gas lines. If there are safety issues, leave your home and wait for or listen to your local authorities to learn when you can return.

When inspecting your home, avoid broken glass and sharp objects or remove them. Watch out for things that could cause you to trip or fall.

Take photos or videos of the damaged areas and personal property. You also can jot down notes about any significant damage you see.

My family and I were evacuated from our home. When can we go home?

Wait to return to your home until your state or local authorities tell you it’s safe. The authorities won’t let you return to your home if there are hazards like downed power lines or broken gas lines. This is for your safety.

There’s a lot of damage to my home. What should I do about the damage?

Try to prevent further damage by making essential repairs, like covering roofs, or windows with plywood, tarp, canvas, or other waterproof materials.

IMPORTANT: KEEP ALL RECEIPTS FOR EMERGENCY REPAIRS TO GIVE TO YOUR INSURANCE COMPANY. Because you have to prevent more damage, you may want to hire a contractor to make any emergency repairs.

Don’t make permanent repairs before talking with your insurance agent or insurance company. Your company may not pay for repairs it didn’t authorize.

If you’re contacted by any contractors, review the section on Avoiding Insurance Fraud to avoid being taken advantage of.
There’s so much damage to my home, there’s no way I can stay. What should I do?

Do your best to secure your home and personal belongings.

Gather important papers, including insurance policies and a list of all damaged or destroyed personal property (a home inventory list), if you have one. Take those with you if you can’t stay in your home.

If you can’t stay in your home, save any hotel receipts. Your insurance company will need the receipts to repay you.

Contact your doctor’s office, pharmacy, or health plan if your prescription medicines were lost or if you lost your glasses, contacts, hearing aids, walker, wheelchair, or other medical equipment in the disaster.

Make sure you notify utilities and your mortgage company and make arrangements for mail deliveries.

What types of living expenses does ALE pay for?

The insurance company will not pay ALL of your living expenses. ALE is to help pay those expenses that are beyond your normal expenses because you can’t live in your home. For example, ALE coverage will pay hotel lodging, but it won’t make your mortgage payment.

ALE typically covers hotel bills, reasonable restaurant meals (if you’re staying in a hotel room with no kitchen), and other living costs above and beyond your normal housing expenses while you can’t live in your home because of damage.

You need to be sure you keep ALL receipts for any additional costs you have. The insurance company will need the receipts to reimburse you.

Is there a limit to how long or how much I can use for my additional living expenses?

Keep in mind that ALE coverage is limited. Some policies have a dollar limit; some also may have a time limitation.

The good news – these limits are separate from any coverage you have to rebuild or repair your home. They’re also separate from any coverage you have to replace your belongings.

Ask your insurance company or adjuster what your policy covers and any time or dollar limits that apply.

ADDITIONAL LIVING EXPENSE (ALE)

Most homeowners policies also will pay the additional expenses you have if you can’t stay in your home because of damage from a covered disaster. For example, if you’ve to move into a hotel or apartment while your home is repaired or rebuilt, the insurance company will pay your costs for temporary housing.

Just don’t expect the insurance company to pay for your stay at a 5-star spa and resort or to eat out every night at the most expensive restaurant in town.

ALE is limited; see below for more information.

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Attachment Six
Property and Casualty Insurance (C) Committee
8/5/19
REPORTING AN INSURANCE CLAIM

When should I report damage to my home or personal property?

Before reporting the property damage to your home, find out what your deductible is. If the damage is minor, for example, just a few shingles were damaged, you might decide you’re better off paying for the repairs out of pocket instead of filing an insurance claim. But, remember you might not be able to see all the damage. You may want to have a contractor inspect your home.

If you believe the damage will cost more than your deductible to repair, or there’s a lot of damage, you may want to file a claim. It’s important to notify your insurance company as soon as you know there’s damage and you decide to file a claim.

The easiest way to report damage is to call your insurance company or agent directly.

What should I do if I don’t have my company or agent’s phone number?

If you have cell service, use your cell phone to search for phone numbers or the insurance company’s website. There may be a phone number to report a claim.

If you can access social media, you can search for information from your insurance company or state department of insurance about how to file a claim.

If you have limited or no cell service, look for mobile claims centers in your area. Local news outlets and social media usually announce their locations.

What do I need to know when I call to make a claim?

It will help if you have your policy number. But if you don’t, your insurance company or agent can find your policy with your name, address, and phone number. You’ll need to briefly explain what happened and describe the type and extent of the property damage.

If you aren’t staying in your home, be prepared to give your insurance company and agent your new contact information—a phone number and an address.

Let your insurance company and agent know when you call if you’ve taken photos and videos of the damage and have cost estimates.

What is a contractor?

An individual you hire to manage the repair of your home. The contractor is responsible for supplying the necessary equipment, material, labor and services to complete repairs.
What do I need to ask when I file a claim?

You should ask:

- For the name and phone number for every person you talk to.
- For your claim or reference number.
- How long you have to file a claim.
- If you need estimates to make repairs or rebuild before you can file a claim.
- For a general idea of what your policy will cover.
- If your insurance policy covers hotel costs. For how much? For how long?
- For information about your deductible. Are there separate deductibles for hail, hurricane, or wind damage? What are those?
- If there are any special processes or procedures you need to know about.
- When you can expect an adjuster to call.
- What other information the company will need to process the claim.

What if I don’t have a completed home inventory list?

Don’t worry; the adjuster will give you some time to make a list. Ask the adjuster how much time you have to submit this inventory list.

Work from memory if your property was destroyed and you have no records.

Review photos, for example on your cell phone or from family or friends, taken inside your home. That may help you make the list.

Search online shopping websites or online retailers to help estimate costs.

The National Association of Insurance Commissioners (NAIC) has a printable inventory listing that may help you as you’re making your list.

https://www.insureuonline.org/home_inventory_checklist.pdf

What other information or paperwork could the insurance company or agent ask for during the claims process?

A list of all damaged or destroyed personal property (a home inventory list) and receipts, if you have them, showing when you bought the damaged or destroyed items.

A list of damage to the home and other structures, like a garage, tool shed, or in-ground swimming pool. You’ll need this list when you meet with the adjuster.
What is a company adjuster?
A company adjuster works only for that insurance company. The insurance company hires and pays a company adjuster. This adjuster will settle the claim based on the insurance coverage you have and the amount of damage to your home and property. You do not pay a company adjuster.

What is an independent adjuster?
An independent adjuster works for several different insurance companies. An insurance company uses independent adjusters when it doesn’t have its own adjusters on staff or when it needs more adjusters than it has available; this often happens in a large disaster. An independent adjuster does the same work as a company adjuster (see above). You do not pay an independent adjuster.

What is a public adjuster?
A public adjuster is a professional you can hire to handle your insurance claim. Public adjusters have no ties to the insurance company. They estimate the damage to your home and property, review your insurance coverage, and negotiate a settlement of the insurance claim for you. Many states require public adjusters to be licensed. Some states prohibit public adjusters from negotiating insurance claims for you. In those states, only a licensed attorney can represent you. You have to pay a public adjuster.
How long after I file a claim will an adjuster come to inspect my home?

It depends – every disaster can be different. Ask your insurance company when you file the claim.

If you don’t hear from an adjuster in a reasonable amount of time, contact your agent or the company. A reasonable amount of time could be 3 to 5 days for a minor claim. But, it may take longer for the adjuster to reach you following a large disaster in your area. Be sure they know how to contact you.

What should I do to prepare to meet with the adjuster?

- Make a list of all damaged or destroyed personal property. Make a list of damage to the home and other structures, like a garage, tool shed, or in-ground swimming pool. Work from memory or from photos if you have no records of your destroyed property.
- Gather any photos or videos of your home and property before they were damaged or destroyed.
- Include receipts from when you bought the damaged or destroyed items, if you have them. Search online shopping sites or online retailers to help estimate costs.
- If you have time before the adjuster inspects your home, try to get written bids from contractors. You aren’t required to have bids, but it can help. The bids should detail the materials to be used, prices of those materials, and labor on a line-by-line basis.
- Take notes when you meet with the adjuster. Get the adjuster’s name and contact information and ask when you can expect to hear back. You can write this information down in the Claims Communication Section in the back of this resource.

What will happen when the insurance adjuster comes to my home?

- You should be there when the adjuster comes to your home. You can show the adjuster where you believe there has been structural damage and give the lists you’ve prepared of property or structural damage, photos or videos you’ve taken, and bids from contractors.
- The adjuster will inspect your home and take photographs and measurements. While the adjuster is there, they may even do some calculations of the damage and cost to repair.
- Before the adjuster leaves, make sure you have their contact information. Ask the adjuster what the next steps will be and to estimate when you’ll hear back from them.
- Ask the adjuster if there’s any other information you should provide. After the adjuster leaves, you may need to gather more information or start a personal property inventory list.

If I hire a public adjuster, will the insurance company still send its own adjuster?

The insurance company doesn’t have to accept your public adjuster’s estimates.

The insurance company will typically send either a company adjuster or an independent adjuster to assess and estimate damage to your home or property.
How is a public adjuster paid?

- If you hire a public adjuster, it’s your responsibility to pay their fee.
- Depending on the laws of your state, public adjusters can charge a flat fee or a fee that’s based on a percentage of the settlement you get from your insurer.
- In some states, the maximum a public adjuster can charge is set by law. The maximum also may vary depending on whether a widespread catastrophe caused your loss.
- A public adjuster should give you a contract. The contract should explain what services the adjuster will provide and how much you will pay.
- If you hire a public adjuster after your insurer has made an initial offer, ask about the fee. The contract should say if the fee you’ll pay will be based on the total the insurance company pays or on the amount the public adjuster negotiates for you.
- You should ask your public adjuster to routinely provide you updates on the status of your claim.

DETERMINING COVERAGE (SETTLING A CLAIM)

How do I get a settlement offer? Who gives me that?

The company adjuster or independent adjuster will calculate the amount of damage to your home and property. They will review your policy and determine what deductibles may apply and if there are any limits on what will be paid. Once they’ve made those calculations, they’ll contact you and your public adjuster or lawyer (if you have one) and share their estimates and calculations with you. They also may contact your contractor about their estimates and calculations.

Will I get a lump sum payment and when will I receive money?

The settlement process is not a single transaction. You’ll get a number of payments for different parts of your claim to help you start the rebuilding and repairing process. You’ll likely receive a payment for your additional living expenses mentioned above. Then you’ll start to receive payments to replace your personal property, followed by payments for the repairs and construction on your home.

Why did the insurance company make the check payable to me AND my mortgage company?

If you have a mortgage on your home, your lender has an interest in making sure the home is rebuilt – or that your loan is paid in full. Your mortgage lender required you to add them as an additional insured on your homeowners policy. Because of this, the insurer is obligated to include them on the check it pays for major repairs. You’ll need to work with your mortgage lender to get the claim money released for repairs. If you have problems working with your mortgage lender, contact your state’s agency that regulates banks and mortgage lenders or your state’s Attorney General’s Office for assistance. The federal government also has a website where you can make a complaint against your bank or mortgage lender, if you aren’t getting the help you need. That website is: https://www.usa.gov/complaints-lender. Your state department of insurance also may have suggestions for you.
How long will it take for my insurance claim to be settled?

Everyone wants the process to be done as fast as possible so they can return to a normal life.

If there’s substantial damage involving your home and property, an insurance claim is not going to be closed with a single payment. There will be claims payments for various parts of your claim as the rebuilding process moves along. Most people find it takes at least 18 to 24 months to repair/rebuild their home and replace their possessions after a major disaster. Your insurance claim will stay open until the insurer has made all payments you’re entitled to under your policy.

You should feel free to contact your insurance company or adjuster for a status on your claim at any time during the claims process.

What if I’m not satisfied with the amount of my insurance settlement?

- Your settlement won’t necessarily be the same as your neighbor’s. Your coverages, deductible, and policy limits may be different even if the damage looks the same.
- If the insurance company denies any part of the claim, ask for the denial in writing. Keep all paperwork.
- If you don’t believe the offer is fair, call the insurance company. Be prepared to explain why you think the offer is unfair. If you’re not satisfied with the response, contact your state insurance department.

What if the insurance company doesn’t agree with the public adjuster’s or my contractor’s estimate of the damage?

Differences in construction estimates are common. Ideally, you and the insurance company should reach agreement on a “scope of loss”. This is a detailed list of the quantities of construction materials, labor, profit and overhead, building code compliance, and every single item required to repair or rebuild your home.

Once you’ve submitted all the information that your insurance company needs, including written estimates from contractors, the adjuster will calculate the total cost.

If you disagree with the claim amount the adjuster has calculated, there are different ways to settle that disagreement without going to court. Two ways are appraisal and arbitration.

**Appraisal:** If you can’t agree with your insurance company about how much it will cost to rebuild your home and/or repair or replace your property, you can use the appraisal process to resolve the differences. This isn’t the same as an appraisal you may have of your home’s value.

The appraisal process begins with two appraisers comparing their estimates. The appraisal process only determines costs, not if your policy covers these costs. It isn’t a court proceeding.

If you use the appraisal process, you’ll have to pay some of the costs. What you’ll have to pay will depend on your state’s law.

If your policy has an appraisal clause, you must go through the appraisal process before you can sue your insurance company.

**Arbitration:** Arbitration is a legal process, but you don’t have to go to court. In an arbitration hearing, a neutral third party (arbitrator) hears from both you and your insurance company. Both parties agree to accept the arbitrator’s decision. Usually the decision is binding so you can’t go to court to appeal the decision.

Some insurance policies require arbitration to settle differences. Other policies will say how arbitration will work if both you and your insurance company agree to use it. If you use arbitration, you’ll have to split the cost with the insurance company. But, some state laws may require you or your insurance company to pay the full cost if you aren’t successful.

**What can I do if my claim was denied?**

If you think the insurance company should have paid your claim, you can use arbitration or file a lawsuit to get the insurance company to reverse its decision. But, before you do any of those, contact your state insurance department for help.

Some states may have a mediation process that you can use. Contact your state department of insurance for more information.
HOW IS A CLAIM PAYMENT AMOUNT CALCULATED?

A number of important insurance terms will help you understand how your insurance claim will be paid. The following sections explain terms like deductible, depreciation, Actual Cash Value, and Replacement Cost.

What is a deductible?
A deductible is the part (or amount) of the claim you’re responsible for. Insurance companies will deduct this amount from any claim settlements they pay to you or on your behalf. So if your insurance policy has a $1,000 deductible, that means you’ve agreed to pay $1,000 out of your pocket for the damage to your home.

Are there different types of deductibles?
Yes. A deductible can be either a specific dollar amount or a percentage of the total amount of insurance. There are special deductibles that apply to certain types of claims; some deductibles are applied to specific parts of your home. Look at the declarations page or the front page of most homeowners insurance policies to learn about your policy’s deductible.

HOW ARE DEDUCTIBLES USED TO CALCULATE A CLAIM?

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<td>Insured Value: $250,000</td>
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<tr>
<td>Claim Settlement Amount: $245,000</td>
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Some insurance policies have a special deductible for losses caused by wind, hurricanes, or other types of storms. The insurer applies this deductible when one of those types of disasters causes the damage. If something else damages your home, then the “all peril” deductible would apply.

Some policies also may have a special deductible that applies to a specific part of your home, like your roof. In these cases, the deductible could be either a flat dollar amount or a percentage.
REPLACEMENT COST VERSUS ACTUAL CASH VALUE

If you have **Replacement Cost Value (RCV)** coverage, your policy will pay the cost to repair or replace your damaged property without deducting for depreciation.

If you have **Actual Cash Value (ACV)** coverage, your policy will pay the depreciated cost to repair or replace your damaged property.

Check the declarations page of your homeowners policy to see whether the policy provides replacement cost coverage. If it doesn’t specify replacement cost, then your policy likely only covers actual cash value. If it specifies replacement cost, then you have replacement cost coverage.

Under an RCV or ACV policy, your dwelling coverage pays for damage to the structure and will pay only up to the policy limit.

Even if you bought an RCV policy, there may be other limits on what the policy will pay for damage to certain surfaces, such as roofs. In some cases, the policy may pay ACV on your roof, but RCV on the rest of your home and property. If you have questions, call the adjuster or your insurer and ask what type of coverage you have.

**Example:**

The Smiths and the Johnsons are next door neighbors. Their homes are exactly the same size, built in the same year, and have the exact same floorplan. One night, a terrible storm tears through their town, destroying the Smith’s and the Johnson’s roofs. Both roofs have the same damage. The Smiths and the Johnsons have a $1,000 deductible, and both roofs will cost $15,000 to replace. The Smiths have a replacement cost policy, while the Johnsons have an actual cash value policy.

**Smith’s Replacement Cost Value**

- **Insurance valuation method:** RCV
- Cost of Smith’s roof ten years ago: $15,000
- Policy deductible: $1,000
- Cost to replace roof: $15,000
- Depreciation not applicable for RCV

**Insurance payment:**
- $15,000 cost of new roof
- $0 depreciation (no depreciation with RCV)
- $1,000 deductible
- $14,000 insurance payment

**Johnson’s Actual Cash Value**

- **Insurance valuation method:** ACV
- Cost of Johnson’s roof ten years ago: $15,000
- Policy deductible: $1,000
- Cost to replace roof: $15,000
- Depreciation schedule: $1,000/year

**Insurance payment:**
- $15,000 cost of new roof
- $10,000 depreciation ($1000/yr x 10 years)
- $1,000 deductible
- $4,000 insurance payment
HOW DOES DEPRECIATION WORK?

IS ALL DEPRECIATION THE SAME?

No. Depreciation in an insurance claim is much different than depreciation on assets for taxes and is different from an accountant's calculation of depreciation on property.

In an insurance claim, the deduction for depreciation may be significant, especially if the damaged property was at or near the end of its useful life. For example, if a covered cause of loss destroys your 20 year old roof and it must be replaced, a policy that pays RCV will cover the full cost to replace the roof. However, an ACV policy may pay as little as 20% of the cost to replace the roof, since the useful life of a roof is usually about 25 years.

WHAT IS “DEPRECIATION” AND HOW DOES THAT AFFECT MY CLAIM?

Everything covered under your homeowners policy is assigned a value. Your home, and most of its contents and components, are likely to decline in value over time because of age or wear and tear. This loss in value is known as depreciation.

Insurers usually calculate depreciation based on the condition of the property when it was lost or damaged, what a new one would cost, and how long the item would normally last.

For example, your two-year old laptop that was in good condition was destroyed in a disaster. A similar new laptop would cost $750. Your laptop normally lasts four years, so it had lost 50% of its value (25% a year). So, the value of your laptop at the time it was destroyed was half of $750, or $375. Your insurance settlement would include $375 to reimburse you for this laptop.

\[
\begin{align*}
\text{Cost of new laptop} & \quad \text{(Replacement cost value)} \\
\text{50\% depreciation} & \quad \text{(2 years \times 25\% per year)} \\
\text{Value of your laptop} & \quad \text{(Actual cash value)}
\end{align*}
\]

\[\$750 - \$375 = \$375\]
I have a replacement cost policy, but my insurance company only paid for part of the claim. Can they do that?

When you have an RCV policy and turn in a claim for a covered loss, the insurer may pay only the ACV for the damage to your home or personal property.

But, when you present evidence that the damaged property has been repaired or replaced, the insurer will pay the difference (this is referred to as “recoverable depreciation”) up to the replacement cost.

Recoverable depreciation is calculated as the difference between an item’s replacement cost and ACV.

Is there a time limit on when I can get paid for the recoverable depreciation?

Yes, there’s usually a time limit. That time limit can range from 6 months to up to one year, depending on your state’s laws and your policy.

In certain circumstances, like a very large-scale disaster, insurance companies know it will take longer to rebuild homes and replace property. They’ll give you more time if you ask. Your state insurance department may require the insurance company to give you more time.

If you have questions about this time frame, ask your adjuster. You also can contact your state insurance department.

I was told I have to replace with “like kind and quality”. What does that mean?

Most insurance policies that are Replacement Cost cover repairs or replacements with property of “like kind and quality”.

Your insurance policy isn’t intended to pay for expensive improvements or upgrades. For example, if you had a 3-tab shingle roof before the loss, your insurance policy would cover the cost of another 3-tab shingle roof, but not a more expensive slate roof. If you had ceramic bathroom sinks in your home, your insurance policy won’t pay the extra cost to replace those with granite countertops.

What is “Functional Replacement”?

Another type of coverage becoming more common, particularly with older homes, is known as “Functional Replacement Coverage” (FRC). FRC replaces the damaged property with a functional replacement, which isn’t necessarily the same quality and craftsmanship as the original materials.

A simple example would be replacing plaster walls with drywall. Both provide solid walls and have the same function, yet the cost varies greatly between the two. Another example would be a damaged banister in a home. The repair could be made with wood carved in the same architectural style, but using a less expensive wood – for instance, replacing an oak banister with a pine banister. Another example would be replacing a tile roof with a shingle roof.
My adjuster mentioned that some of my property has a special limit. What is that?
A special limit caps how much money you’ll be paid for certain types of property. Don’t confuse this with the contents or personal property limits. A special limit will apply to specific categories of property like jewelry, furs, guns, antiques, collector items, and coins.

My home and/or property were destroyed and can’t be repaired. Can I use the insurance settlement to build or buy another home somewhere else?
Check your insurance policy and talk with your agent or company. You also can call your state department of insurance.
You may not get the same settlement if you don’t rebuild on the same location.

WHAT IS ORDINANCE AND LAW COVERAGE?

- In many instances, your local government may require your home to be repaired or rebuilt to meet current local building codes. Unless you have Ordinance and Law coverage, a standard homeowners policy doesn’t cover that added expense.

- Ordinance and Law coverage in your homeowners insurance policy covers part or all of the cost to repair or rebuild your home to meet current local building codes. For example, electrical wiring, plumbing, windows, and roofing materials are some things that may need to be updated.

- Standard homeowners policies don’t cover the added expense to meet current building codes when you repair or replace your home. Look at the declarations page of your policy to see if you have Ordinance and Law coverage.
I’ve accepted the insurance company’s settlement and I’m ready to repair/rebuild. What do I need to know?

- Use reputable contractors. Reputable contractors usually don’t ask for a large payment upfront.
- Contractors may be licensed or registered. The difference is important. A licensed contractor has passed exams and met other requirements to show that he or she is competent. A registered contractor has provided contact information to a government authority. You can learn more about licensing and registration of contractors by calling your state Department of Insurance. They can help you contact the state agency that licenses and regulates contractors.
- Ask your contractor to show you the building permits. Contractors most likely will need to apply and pay for building permits before beginning work. And, don’t forget to check with your local officials about any requirements for permits or inspections.
- Get an estimate from more than one contractor. An estimate from a contractor that’s much lower than any of the others doesn’t mean it’s the best deal. Make sure all the quotes include the same things and check references.
- Contact your insurance company and adjuster any time you find damage that hasn’t already been reported or inspected or if you learn something new about damage to your home or property.

What should I know about a contractor before hiring one?

Get the following information:

- a copy of the contractor’s identification (the contractor’s name and the name of the business);
- a copy of the contractor’s business license (check the expiration date);
- a copy of the contractor’s proof of worker’s compensation insurance; and
- a copy of the contractor’s proof of liability insurance. A licensed insurance agent or company issues this certificate. The proof of insurance should show the company’s name, phone number, and the policy number. Call the insurance company to verify the coverage.
Assignment of Benefits

Some states allow assignments of benefits (AOB) after a loss. This agreement transfers your rights under your insurance policy and your claim to a third party, most often your contractor.

Be cautious if you’re asked to sign an AOB. Typically, there’s a promise from the contractor to handle all matters with the insurance company for you, which may sound great. But you also may be giving up some, most, or even all of your rights, including having a lawsuit filed without your approval or knowledge.

Take your time to review any AOB carefully. Talk to your claims adjuster or you can ask an attorney to review and give you advice. You can also call your state department of insurance.

What Can I Do to Avoid Insurance Fraud?

After storms and other disasters, fraudsters and scam artists often arrive quickly. Watch for contractors who offer to do your repairs with upgraded or free building materials. Here are a few tips to help you avoid becoming a victim of a disaster fraudster or scam artist:

- If you’re working with contractors you don’t know, find out where they’re from. Many fraudsters will travel from state to state.
- Before you sign any contracts or pay any money, ask for references.
- Never pay the full amount before the work is complete.
- Ask your local Better Business Bureau and state Attorney General’s Office about complaints.
- Check online for information about the contractor.
- Most importantly, report any suspected fraud to your insurance agent and your state’s department of insurance as soon as possible.
I’ve just gone through one disaster. What do I need to do to prepare for the next disaster?

There are two different parts of preparation – preparing your home and preparing yourself financially.

Preparing your home
While you’re rebuilding, think about what you can do to minimize damage to your home during the next storm or disaster. This is called mitigation.

WAYS YOU CAN LIMIT FUTURE DAMAGE:

You can make changes to your home to limit damage during a future tornado, wildfire, hurricane, or high wind.

**Secure entry doors.** Make sure entry doors have a two-inch deadbolt and three hinges with screws long enough to secure the door and frame to the wall. The frame should be well anchored.

**Brace your garage door.** You can buy bracing products that will make your door stronger and more wind resistant. If you’re expecting bad weather and haven’t braced your garage door, you can put a vertical brace into the wall framing and floor, much as you would board up a window before a hurricane.

**Install impact-resistant windows.** Local building codes in some areas require this.

**Leave the windows closed in a storm.** Opening the window doesn’t equalize the pressure between the inside and outside of the house. Instead, it pressurizes the inside of the house, like blowing up a balloon until it pops. The air pushes off the roof or a wall and the house collapses.

**Install wind-resistant roof structures.** Roofs are usually installed with roofing nails. But this type of roof can come off in high winds. Using hurricane clips to attach roofs creates a stronger connection between the roof and the house. Roofing clips come in a range of protection; the one you need depends on the weight of your roof. The building codes in hurricane-prone areas require roofing clips, but they’re a good idea in tornado-prone areas too.

**Create a wildfire defense area.** Remove flammable materials from around your home. Trim over hanging branches. Remove dead trees and bushes. Clean gutters and clear them of leaves and pine needles.

**Store firewood and other flammable materials away from home, garage, or deck.**

Install mesh screens over exterior vents. This will prevent fire embers from getting inside your home.
A number of great resources are available online can give you more ideas about ways you can reduce or avoid damage to your home.

- Ready.gov (US Department of Homeland Security)
- FEMA Mitigation Resources (US Department of Homeland Security)
- Ready, Set Go! (Wildfire resiliency)

## PREPARING YOURSELF FINANCIALLY

Once you’ve rebuilt or repaired your home, and you’re replacing damaged property, it’s time to prepare for the future.

- You should make a list of all your stuff, called an inventory list. If you don’t want to write everything down or type it into a spreadsheet, you can film a video to show your household items. As you film, you can describe important items, including when you bought the item, its condition, and how much you paid for it, if you know. There also are many mobile apps that will make it easier to create an inventory list. The National Association of Insurance Commissioners (NAIC) has a free app called the MyHOME Scr.APP.book that can be downloaded in the Apple App Store or on Google Play.

- Make a copy of your inventory list and keep it with your insurance policy. You could put the copy somewhere safe, such as a bank safety deposit box. You also could store a copy online.

- Put your insurance company name, policy number, and company contact information somewhere you could find it in a disaster.

- Review your policy with your insurance agent each year to see if your needs have changed.
## CLAIM INFORMATION

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## INSURANCE ADJUSTER INFORMATION

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## CONTRACTOR(S)

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<td>What we talked about:</td>
</tr>
<tr>
<td>What is Next:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Who did I talk to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Company:</td>
</tr>
<tr>
<td>Date/Time:</td>
</tr>
<tr>
<td>What we talked about:</td>
</tr>
<tr>
<td>What is Next:</td>
</tr>
</tbody>
</table>

**EMERGENCY REPAIR LOG**

To help you keep track of any emergency repairs, here are some forms to help you.

<table>
<thead>
<tr>
<th>Repair:</th>
<th>Cost of Repair:</th>
<th>Date of Repair:</th>
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</thead>
<tbody>
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## EMERGENCY REPAIR LOG

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</tbody>
</table>
FLOOD INSURANCE COVERAGE SUPPLEMENT
For The 2019 Reporting Year

POLICY AND CLAIMS DATA

<table>
<thead>
<tr>
<th>All Reported Values are on a Direct Basis</th>
<th>U.S. Private Flood Insurance</th>
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<tbody>
<tr>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Reported in $1,000</td>
<td>Residential</td>
</tr>
<tr>
<td>Premiums &amp; Expense</td>
<td></td>
</tr>
<tr>
<td>1. Written</td>
<td></td>
</tr>
<tr>
<td>2. Earned</td>
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</tr>
<tr>
<td>3. Losses Incurred</td>
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</tr>
<tr>
<td>4. Loss Adjustment Expenses Incurred</td>
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</tr>
<tr>
<td>5. Other Underwriting Expenses</td>
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</tr>
<tr>
<td>Loss Reserves</td>
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</tr>
<tr>
<td>6. Losses Paid</td>
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<tr>
<td>7. Losses Unpaid</td>
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<tr>
<td>8. Case Reserves</td>
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</tr>
<tr>
<td>9. IBNR</td>
<td></td>
</tr>
<tr>
<td>Number of Policies in Force</td>
<td></td>
</tr>
<tr>
<td>Number of Claims Reported</td>
<td></td>
</tr>
</tbody>
</table>

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Attachment Seven
Property and Casualty Insurance (C) Committee
8/5/19

W:\National Meetings\2019\Summer\Cmte\C\Flood