



WASHINGTON REPORT

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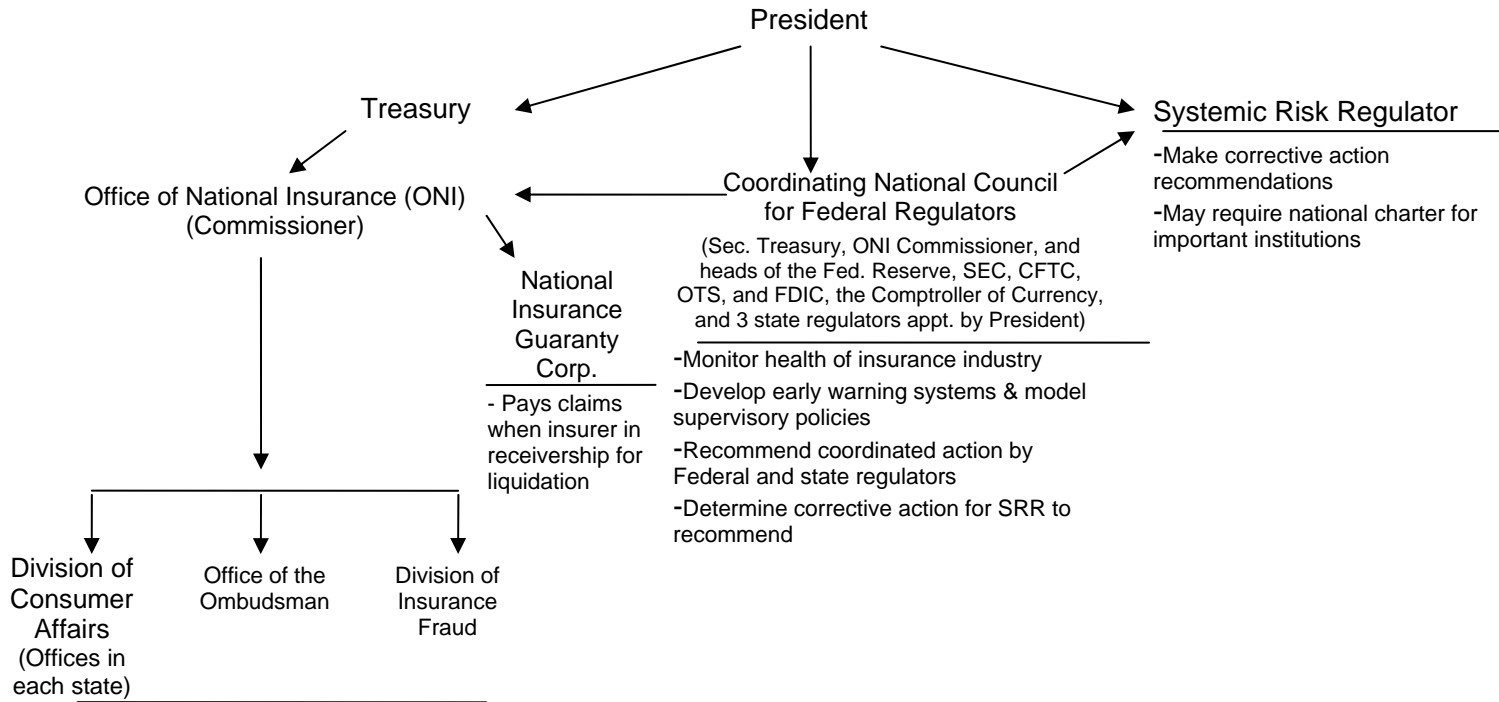
Major References: [*National Insurance Consumer Protection Act*](#)

Prior AALU Washington Reports: [08-64](#); [08-32](#); [06-113](#); [06-45](#)

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THE CONCLUSION OF THIS WASHINGTON REPORT.**

In our Washington Report No. 09-40, we outlined the general parameters of the National Insurance Consumer Protection Act (NICPA) (H.R. 1880 or the "bill") introduced in early April 2009 by Congresswoman Melissa Bean (D-IL) and Congressman Ed Royce (R-CA). The bill appears to be a streamlined version of legislation introduced previously by Bean and Royce (H.R. 3200), and, on the Senate side, Senators Sununu (R-NH) and Johnson (D-SD), in the prior (110th) Congress (S. 40.) H.R. 1880 is similar in most respects to its predecessors, but, undoubtedly due to the recent financial upheaval, contains new provisions with respect to a new Systemic Risk Regulator and strengthened provisions with respect to the proposed National Guaranty Corporation. AALU, which has a position in favor of the concept of optional federal charter legislation, will continue to carefully review the specific provisions of the legislation in conjunction with our Regulatory Reform Committee and with industry partners and provide input to legislators to try to assure that the any legislation enacted is beneficial to you, your clients, the broader industry and the general public. This Washington Report provides a flow-chart and detailed summary of NICPA, based on an examination of the proposed statutory language.

NICPA Flow-Chart



- Charter & license
- Supervise & regulate
- Enforce
- Issue financial, policy & market conduct standards
- Develop & implement producer database
- Form agreement with foreign insurance regulators
- Approve change of control of national insurers
- Examine reports by national insurers
- Issue written notice to IHCs to cease action that may pose significant risk
- Appoint Director for National Insurance Guaranty Corp.
- May appoint conservator or receiver for national insurers

Detailed Summary of NICPA

1. Purposes. (Preamble, § 2)

The purposes of NICPA are twofold:

(1) To ensure the financial stability and integrity of national insurers, national insurance agencies, and national insurance producers through a comprehensive system of national supervision and regulation; and

(2) To ensure the fair and equitable treatment of policyholders, claimants, and other consumers served by national insurers, national insurance agencies, and national insurance producers.

2. The Office of National Insurance. (Title I, Subtitle A, §§ 101-109)

An independent Office of National Insurance (ONI) will be created within the Department of the Treasury, similar to the Office of the Comptroller of the Currency (OCC) and the Office of Thrift Supervision (OTS). ONI's National Insurance Commissioner (the "Commissioner") will be appointed by the President for a five-year term, subject to the advice and consent of the Senate.

(a) Duties. Duties of the Commissioner will include the organization, incorporation, operation, regulation and supervision of national insurance and national insurance agencies, as well as the licensing, regulation and supervision of national insurance producers. In pursuance of these duties, the Commissioner will have rulemaking and enforcement powers.

(b) Expenses. The expenses of the ONI, including a working capital fund, will be funded through an annual assessment on insurers, agencies and producers.

(c) Sub-Agencies. Agencies within the ONI will include: (i) a Division of Consumer Affairs, which will have offices located in each state; (ii) a Division of Insurance Fraud; and (iii) an Office of the Ombudsman.

(d) Self-Regulatory Organizations. The Commissioner is authorized to register and oversee self-regulatory organizations for nationally chartered and licensed insurers, agencies and producers. Key powers of the Commissioner, such as chartering and merger and conversion determinations, may not be delegated to a self-regulatory organization.

(e) Applicable State Law. The activities and operations of nationally chartered and licensed entities will be primarily subject to federal law. However, national insurers and nationally licensed insurance producers will be subject to certain categories of State law. These categories include: (1) State tax laws; (2) State unclaimed property and escheat laws; (3) State laws related to participation in assigned risk plans and other mandatory residual market mechanisms that are designed to make insurance available to those unable to obtain insurance in the voluntary market; (4) State laws that provide for compulsory coverage of workers' compensation or motor vehicle insurance; and (5) Participation in state guaranty funds.

3. National Life Insurers and Agencies: Charters. (Title III, Subtitle A, §§ 301-305)

NICPA authorizes the National Insurance Commissioner to issue charters for national insurers and agencies for life insurance, property and casualty, and reinsurance (but not health insurance). The underwriting of life insurance and P/C insurance is separated, but a holding company is permitted to own

both a National Life Insurer and a National P/C Insurer. A nationally chartered agency will be authorized to sell insurance for any nationally chartered or State licensed insurer.

(a) Commencement Date. The Commissioner may not charter a national insurer or national insurance agency until the Commissioner notifies Congress that the ONI is operational and that all regulations necessary to govern the organization, formation, operations, and supervision of such insurers and agencies have been issued in final or interim final form. The Commissioner must provide this notification not later than 2 years after the date of the enactment.

(b) Criteria. In determining whether to issue a charter for a national insurer or national insurance agency, the Commissioner must consider the character and competency of the parties seeking the charter, and the financial resources and future prospects of the proposed national insurer or proposed national insurance agency.

(c) Corporate Governance. A nationally chartered insurer or agency may elect in its bylaws to follow the laws of the State in which its main office is located (or the State in which the main offices of its parent is located,) the Delaware General Corporation Law, or the Model Business Corporation Act of the American bar association in regard to matters of internal corporate governance. A nationally chartered insurer or agency will be considered a citizen of the State in which it has its main office and the State in which it has its principal place of business for jurisdictional purposes.

(d) Corporate Powers and Prohibitions. NICPA contains a long list of corporate powers, similar to those that would be contained in State law. However, no nationally chartered insurer or agency may: (i) establish or acquire a subsidiary without prior notice to the Commissioner; (ii) engage in mutual to stock conversions, stock to mutual conversions, mergers, acquisitions, asset transfers, and other similar corporate transactions without the prior approval of the Commissioner; or (iii) engage in any activity that the Commissioner determines, by regulation or order, poses a serious risk to the solvency of a national insurer or national insurance agency, jeopardizes the interests of policyholders of a national insurer or national insurance agency, or otherwise is incompatible with the public interest.

(e) Audit Committee. Each nationally chartered insurer and agency must establish an audit committee of its Board of Directors composed entirely of “outside” directors who are independent of management.

(f) Non-U.S. Insurers. The Commissioner may license U.S. branches of non-U.S. insurers. The Commissioner must maintain a non-discriminatory policy with respect to the issuance of charters such insurers.

(g) Consumer Liaison. Each national insurer and agency must appoint a liaison to serve consumers and address complaints or disputes and must adopt policies and procedures designed to ensure fair and expeditious handling of such complaints and disputes.

(h) Charter Conversions and Bulk Transfers. An insurer or agency may convert from a State-chartered entity to a nationally-chartered entity, and vice versa, with the approval of the Commissioner. Bulk transfers of policies made in connection with such conversions may be made with the approval of the Commissioner. In most cases, neither the policy holders nor the States may object to such transfers.

4. Supervision of National Insurers and Agencies. (Title I, Subtitle B, §§ 111-117)

The Commissioner has a comprehensive set of supervisory and regulatory powers. National insurers are subject to examinations every two years, and national insurance agencies and national insurance producers are subject to examination in response to a complaint or evidence of a violation of the law or regulations. National insurers, their holding companies, and fellow subsidiaries of their holding companies are subject to risk based capital standards, investment standards, and asset and liability valuation requirements that are based upon model laws and regulations developed by the National Association of Insurance Commissioners (NAIC). National insurers are subject to an independent audit committee requirement, limitations on dividends, and limitations on transactions with affiliates, and each national insurer and national insurance agency must submit to the Commissioner such reports, containing such information and in such form, as the Commissioner may prescribe by regulation.

The Commissioner must, by regulation, require national insurers and national insurance agencies to establish and maintain procedures reasonably designed to assure and monitor compliance with the recordkeeping and reporting requirements of the anti-money laundering provisions of the United States Code.

5. Enforcement Powers. (Title I, Subtitle C, §§ 121-125)

The Commissioner is given enforcement powers patterned after those available to the federal banking agencies, permitting him/her to: (1) revoke or suspend a charter or license; (2) issue a cease and desist order, including an order that mandates affirmative actions, such as the sale of assets or the hiring of new management; (3) remove or suspend individual officers, directors, controlling shareholders, agents and consultants; and (4) impose civil fines of up to \$1 million a day for violations of law or regulations or improper conduct.

(a) Fraudulent Insurance Acts/Whistleblower Protection. Persons who provide or share information about a suspected, anticipated or completed fraudulent insurance act will not be liable to any person with respect to such disclosure unless the disclosure is of a false statement made with actual malice. For this purpose, a “fraudulent insurance act” means an act or omission committed by a person who, knowingly and with the intent to defraud, and for the purpose of depriving another of property or for pecuniary gains, commits, participates in, or aids, abets, or conspires to commit or solicits another person to commit, or permits it employees or agents to commit certain acts involving the provision of false information.

(b) Foreign Investigations. The Commissioner may request assistance from and provide assistance to foreign governments with respect to violations of insurance laws and regulation or currency transactions.

(c) Hazardous Financial Condition of National Insurers: Reports and Corrective Action. The General Accounting Office is required to issue a report to the Commissioner (and to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives) to identify an appropriate structure of procedures and requirements for taking prompt corrective actions with respect to national insurers, to ensure that any hazardous financial condition of such a national insurer is resolved effectively and efficiently, with the fewest possible losses. Upon receipt of this report, the Commission is required to issue regulations to implement such procedures and requirements that it deems necessary and appropriate to address such situations.

6. Financial, Policy and Market Conduct Standards. (Title III, Subtitle B, §§ 311-314)

In general, the financial, policy, and market conduct standards issued by the Commissioner must: (i) promote the stability and integrity of national insurers and national insurance agencies; (ii) protect policyholders and other consumers and investors; and (iii) encourage innovation and competition by national insurers and national insurance agencies. In establishing the required financial, policy, and market conduct standards, the Commissioner must take into consideration standards, models, practices, and instructions established by the National Association of Insurance Commissioners (NAIC).

(a) Financial standards. The Commissioner will establish, through regulation, financial standards that will address, but will not be limited to: (i) accounting and disclosure; (ii) auditing; (iii) risk management; (iv) internal controls; (v) investments; (vi) capital and liquidity; (vii) actuarial opinions; and (viii) reinsurance.

(b) Policy standards. By regulations for different categories of policies issued by a national insurer, the Commissioner will establish policy standards. Each insurer must file a form of each policy with the Commissioner. For purposes of contract law, the provisions any insurance policy or other product of a national life insurer must be interpreted in accordance with the law of the jurisdiction specified by the parties to the insurance policy or other product. If the parties have not specified a choice of law, the applicable law will be (i) the law of the jurisdiction in which the main office of the national life insurer is located, (ii) the law of the jurisdiction in which the principal place of business of the national life insurer is located, or (iii) the jurisdiction in which the insurance policy or other product is delivered (the “default law”).

(c) Rates, Rating Elements and Price. The Commissioner may not, require a national insurer to use any particular rate, rating element, or price

(d) Market conduct standards will be established by regulation to address market conduct standards for national insurers, national insurance agencies, and national insurance producers that implement the model laws of the NAIC entitled “Unfair Trade Practices Act” and “Unfair Claims Settlement Practices Act.”

(e) Disclosure. The Commissioner must require each policy issued by a national insurer to include the following disclosure on the cover page:

“This policy has been issued by a national insurer, which is supervised by the Office of National Insurance. If you have any questions or complaints about this policy, you may contact the Division of Consumer Affairs, Office of National Insurance, **XXXX**.”

7. State Taxation of National Insurers. (Title III, Subtitle C, § 321)

In general, except with respect to assessments for State guaranty associations and State retaliatory taxes, both of which must be imposed on a nondiscriminatory basis, a national insurer doing business in any State will be subject to all applicable State and local taxes, assessments, and charges, including insurance retaliatory taxes or other similar taxes, and will be entitled to all applicable tax credits, deductions, and offsets provided under State law, as well as all policyholder surcharge provisions under State law, to the same extent and in the same manner as an insurer licensed to do business in such State and chartered in the State where the national insurer is considered domiciled.

However, a national insurer will not be subject to (i) any additional taxes, assessments, and charges imposed by a State (or local government) by reason of the failure of the national insurer to be licensed or otherwise authorized to conduct business or write or sell insurance policies, by such State, or (ii) special assessments and charges that fund services that the State does not provide with respect to the national insurer.

For purposes of State taxation, a national insurer may designate as its State of domicile, by filing such designation in writing with the Commissioner (i) the State in which the national insurer's principal place of business in the United States is located; or (ii) in the case of an insurer that has converted from a State insurer to a national insurer under NICPA, the State in which such insurer was domiciled immediately before such conversion.

8. State Taxation of National Insurance Agencies. (Title III, Subtitle C, § 322)

A national insurance agency will be subject to all taxes imposed under any applicable provision of State law, to the same extent and in the same manner as an agency chartered in the State in which the national insurance agency is considered domiciled. Domicile for this purpose will be deemed to be the State in which the principal place of business of the national insurance agency in the United States is located.

9. State Taxation of Nonadmitted and Surplus Lines Of Insurance. (Title III, Subtitle C, § 323)

No State, other than the State in which an insured maintains its principal place of business or, in the case of an individual, maintains a principal residence, may require a tax, fee, assessment, or other charge imposed on an insured, either directly or through a producer, that is based upon any payment made as consideration for nonadmitted insurance or surplus lines insurance, and any other compensation given in consideration for a contract of insurance.

10. National Insurance Producers. (Title IV, §§ 401-406)

NICPA authorizes the licensing of national insurance producers. A nationally licensed insurance producer could sell insurance, including surplus lines of insurance, in any State on behalf of any national insurer or a state insurer. Additionally, a State licensed insurance producer could sell insurance on behalf of any insurer, including national insurers, operating within the State in which the producer holds a license. The Commissioner may limit a license to one or more specific lines or types of insurance.

(a) Commencement Date. The Commissioner may not license a national insurance producer until the Commissioner notifies Congress that the ONI is operational and that all regulations necessary to govern the licensing, operations, and supervision of such producers have been issued in final or interim final form. The Commissioner must provide this notification not later than 2 years after the date of the enactment.

(b) Qualifications. The Commissioner must, by regulation, specify educational and examination requirements for obtaining a national insurance producer license, and may impose different requirements for different lines or types of insurance.

(c) Supervision and Examination. The Commissioner may examine (and, in the case of a complaint, will examine) a national insurance producer to assess the producer's compliance with NICPA

and regulations issued thereunder. Sanctions similar to those applicable to national insurers and national insurance agencies may be imposed against national producers who violate NICPA's requirements.

(d) Producer Database. The Commissioner, with the assistance of an insurance self-regulatory agency, will develop and implement an electronic database consisting of information relating to national insurance producers and an electronic communication network that links the Commissioner with State insurance regulators and national insurers, national insurance agencies, and State insurers for an electronic exchange of such information.

(e) Supervision. A national insurance agency is responsible for the supervision of the sales and marketing practices of its agents and employees who are national insurance producers with respect to the sale, solicitation or negotiation of insurance policies. Unless a national insurance agency is responsible for the supervision of a national insurance producer, such producer also will be subject to the supervision of a national insurer if the producer is an agent or employee of the national insurer, or if the principal business activity of such producer is devoted to the sale, solicitation, or negotiation of insurance policies for such insurer, the supervision of the agents for such insurer, or both. Independent insurance producers will be subject to the supervision of the Commissioner. The Commissioner will develop standards for such supervision, and may exempt a national insurer or agency from the responsibility to supervise where appropriate.

(f) Relationship to State Law. Most of the activities of a national insurance producer relating to the solicitation and sale of insurance will be protected from State restrictions, and States will be prohibited from imposing licensing requirements on such producers.

11. Systemic Risk Regulation. (Title II, § 201)

(a) Establishes the Systemic Risk Regulator. The President would appoint a federal agency as the Systemic Risk Regulator (SRR). The President may not appoint the Office of National Insurance as the SRR.

(b) Institutions to Report to SRR. All insurance commissioners (state and national) would be required to share information with the SRR. The SRR will work with the Office of National Insurance or the state insurance authority to request information on the activities and operations of institutions or their affiliates.

(c) Corrective Action Recommendations. The SRR shall also make corrective action recommendations to the Commissioner or state commissioner to take action to mitigate or avoid actions taken by an insurer or affiliate that would have serious adverse effects on economic conditions and financial stability. If action is not taken, the SRR, with approval of the Coordinating Council for Financial Regulators may circumvent the insurance regulator in emergency circumstances.

(d) SRR May Require National Charter for Important Institutions. Finally, if the SRR in consultation with the National Insurance Commissioner determines an insurer is systemically important they can require the insurer to be nationally chartered.

(e) Judicial Action. If the institution is not prompt in its granting of access to the SRR, the SRR may seek a U.S. district court order compelling the institution to respond. All information disclosed to the SRR is considered confidential. The institution may appeal the order within 30 days of its issuance.

(f) Assessment Fee. The institution will pay the SRR an assessment fee, based on the rate established by the SRR and the average total assets of the institution for the previous year.

(g) GAO Report. The GAO will report to Congress on any recommendations made by the SRR to the institutions.

12. Coordinating Council for Financial Regulators. (Title II, § 202)

(a) Establishes a Council. Establishes a Coordinating National Council for Financial Regulators (Council) based on an expanded version of the President's Working Group for Capital Markets.

(b) Composition of the Council. Chaired by the Secretary of the Treasury, it shall also include the Commissioner of National Insurance and the heads of the Federal Reserve, SEC, CFTC, OTS, FDIC the Comptroller the Currency, and three state regulators appointed by the President.

(c) Duties of Council. The Council shall monitor the health of the industry, develop early warning systems to identify weaknesses or strain, recommend coordinated actions for federal and state financial regulators, develop model supervisory policies, and make determinations as to whether corrective action is necessary to mitigate or avoid actions taken by an insurer or affiliate that would have serious adverse effects on economic conditions and financial stability.

13. International Agreements. (Title II, § 203)

The Commissioner may make agreements with foreign insurance regulators and regional or global regulatory organizations to promote stability and encourage open competition. The Commissioner may also provide technical assistance to and cooperate with these bodies. For all international efforts, the Commissioner is to consult with the President and the U.S. Trade Representative.

14. Change in Control. (Title V, § 501)

(a) Acquisition of Control of National Insurer Requires Approval of Commissioner. A person may not acquire control in a national insurer without first submitting written notice of the intent to the Commissioner. If the time period and all extensions have passed without disapproval by the Commissioner, the person may then acquire control.

(b) Disapproval Period. The disapproval period is 60 days from the Commissioner's receipt of notice of intent to acquire control in a national insurer. The Commissioner may extend this period if: Commissioner determines not all information is provided, information is substantially inaccurate, the acquiring person does not cooperate, or the Commissioner determines more time is needed to investigate accounting records or to analyze the safety and soundness of plan and proposals.

(c) Investigation and Report. The Commissioner will investigate every named person in the notice and make a determination as to the accuracy and completeness of the provided information. The Commissioner will prepare a summary report of the investigation.

(d) Notice and Comment. The Commissioner will publish for notice and comment the name of the national insurer to be acquired and the name of every person identified in the acquisition notice.

(e) Disapproval. The Commissioner may disapprove the acquisition if: (i) the acquisition would jeopardize the financial standing of the national insurer or prejudice customers of the

insurer, (ii) the competence, experience, or integrity of the acquiring person is not in the interests of customers or the public, or (iii) the acquiring person does not furnish all information required by the Commissioner. Within 3 days of the Commissioner's decision to disapprove, the Commissioner must notify the acquiring person in writing, with a statement as to the basis for disapproval. A person may request a hearing within 10 days of receipt of the disapproval. The notice of disapproval may be subject to judicial review as to whether it was reasonable.

(f) Judicial Review. A person may obtain judicial review by a U.S. Court of Appeals with jurisdiction over the main office of the national insurer to be acquired. The disapproval may be set aside if found to be arbitrary or capricious or if found to violate the disapproval procedures of the NICPA.

15. Insurance Holding Company Reports and Examinations. (Title V, § 502)

(a) Reports. Each national insurance holding company (IHC) and its subsidiaries (other than a national insurer) shall submit a report to the Commissioner. The report shall contain information as to the operations of the IHC.

(b) Examinations. The Commissioner will examine each national IHC, paid for by the national IHC. The Commissioner may use reports filed with other agencies.

16. Activities of IHCs and Subsidiaries. (Title V, § 503)

IHCs are not to act in ways that pose a significant risk to the solvency of a national insurer, jeopardize the interests of the policy holders of the insurer, or public interest. If the Commissioner finds the IHC acted or reasonably believes the IHC intends to act in such a manner, the Commissioner will issue written notice of actions the IHC must take in a set time frame to correct the violation. The IHC or subsidiary may request a hearing within 10 days of receipt of such notice. The IHC or its subsidiary may also seek judicial review by a U.S. Court of Appeals.

17. Standards. (Title V, § 504)

The Commissioner shall establish, by rule or order, standards on capital, liquidity, dividend, and operations to ensure solvency.

18. Affiliate Transactions. (Title V, § 505)

Transactions between a national insurer and any affiliate are to be fair and reasonable. This includes terms, charges, fees, expenses incurred, and payment received. The Commissioner may deem, by regulation, certain transactions as impermissible.

19. Reinsurance Pooling Agreements. (Title V, § 506)

The Commissioner has exclusive jurisdiction over reinsurance pooling agreements where one or more national insurers are affiliated.

20. Appointment of Conservator or Receiver. (Title VI, § 601)

The Commission may appoint a conservator or receiver for a national insurer if the national insurer: (i) is insolvent, (ii) has substantial dissipation of assets or earnings due to violation of federal or state law or a hazardous practice, (iii) is in hazardous condition, (iv) willfully violated a cease-and-desist order, (v) has concealed books, papers, records, or assets from the examiner, (vi) is likely unable to pay its obligations or

creditors, (vii) continuously violated a law that is likely to cause insolvency or weaken the condition of the insurer, (viii) resolution by board of directors to allow appointment, or (ix) the Attorney General finds the national insurer guilty of money laundering.

21. Establishes a National Insurance Guaranty Corporation. (Title VI, § 602)

The NICPA establishes the National Insurance Guaranty Corporation (NIGC), a non-profit corporation. The Commissioner shall appoint a Director for the NIGC.

22. Claims Paid under Receivership. (Title VI, § 603)

If a national insurer is in receivership for the purposes of liquidation, the NGIC Director is to pay the claims on the life insurance policies or the property and casualty policies.

23. Assessment of National Insurers. (Title VI, § 604)

(a) Assessment. When a national insurer is placed in receivership and subject to claims of policyholders and others, the NGIC Director will impose an assessment on other national insurers in the same line of business, as determined by subsets of property and casualty insurance or the different types of life insurance. Payment is due within 30 days of notice of assessment. The amount is based on a rate set by the Director and the portion of written premiums the insurer of the insurer per for the calendar year.

(b) Abatement or Deferral of Assessment. The Director may abate or defer the assessment if it would endanger insurer of being able to fulfill its contractual obligations. The Director may then turn to other insurers to recoup the deferred or abated assessment.

24. State Guaranty Associations and State Tax. (Title VI, § 605)

(a) State Guaranty Associations. National insurers may participate in state guaranty associations as long as the state does not charge an assessment different from a state insurer.

(b) State Tax. States are not allowed to impose a premium tax, franchise tax, income tax, retaliatory tax, or other primary tax on any national insurer unless the state allows the insurer to recoup assessments.

25. NGIC Director Report. (Title VI, § 606)

Within two years of the enactment of the NICPA, the NGIC Director must report on the involvement of national insurers in state guaranty associations

26. Inapplicability of State Law. (Title VII, § 701)

Except where specified in the NICPA, national insurers, national insurance agencies, and national insurance producers are not subject to state law on licensing, examination, reporting, regulation, or other supervision in the sale, solicitation, or negotiation of insurance to the underwriting of insurance or any other insurance operations.

Any AALU member who wishes to obtain a copy of any of the items discussed in this Washington Report may do so through the following means: (1) use hyperlink above next to “Major References,” (2) log onto the AALU website at www.aalu.org and enter the *Member Portal* with your last name and birth date and

select *Current Washington Report* for linkage to source material or (3) email Anthony Raglani at raglani@aalu.org and include a reference to this *Washington Report*.

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