2014 Atlanta RIMS Educational Conference

Federal Legal and Regulatory Updates Affecting the Insurance Industry

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Presentation Overview

1. Patient Protection and Affordable Care Act
2. Dodd-Frank Wall Street Reform and Consumer Financial Protection Act
3. Terrorism Risk Insurance Act
4. Disparate Impact Discrimination in Homeowner's Insurance Underwriting
5. National Association of Registered Agents and Brokers Act
6. Recent Key Insurance Company Taxation Cases

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Patient Protection and Affordable Care Act

- Employer-Mandate delayed in 2013 for 1 year until January 1, 2015
- Employee-Mandate effective March 31, 2014
- Online federal SHOP delayed until October 2014
- Effects of Federally Facilitated Marketplace's roll-out debacle in 4th Quarter of 2013 still not completely known
- Reinsurance, Risk Corridor and Risk Adjustment Programs in effect from 2014 to 2016
- Feb. 10, 2014 – Obama administration announced it will delay part of the Obamacare employer mandate until 2016, to give big businesses more time to ramp up to full coverage (per Politico)
- Treasury Department stated employers with less than 100 workers won't have to provide health care to their workers in 2015

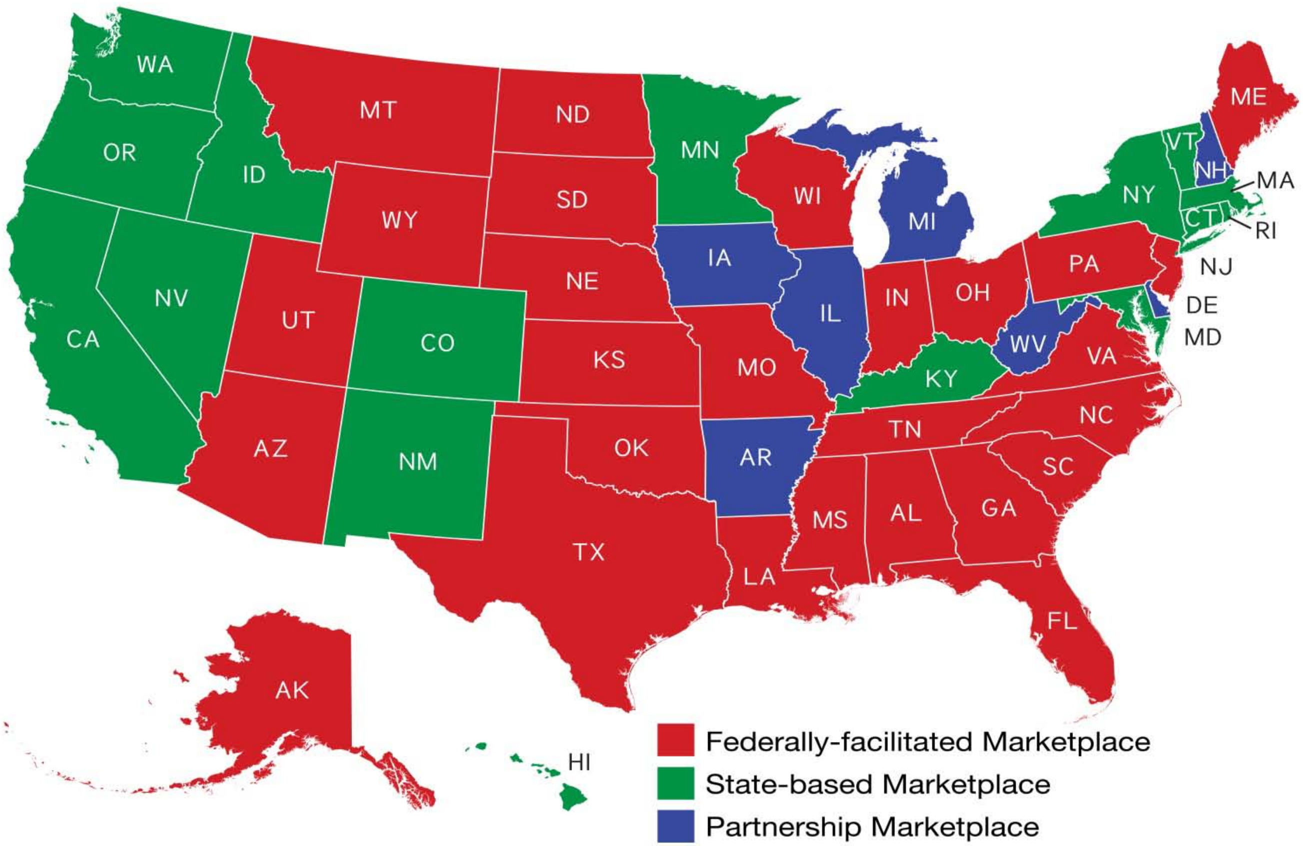
PPACA – Government Health Insurance Exchanges Core Goals

- Create a robust health insurance marketplace with a broad array of health plan choices at competitive prices for individual and small group markets
- Explain adequately to average consumer how the insurance and tax subsidies work and how to buy insurance
- Get individual and small group health insurance markets enrolled in new health plans efficiently as any non-governmentally-operated, private sector online insurance market
- Attract actuarially sufficient number of "healthy" consumers (young adults) to subsidize the expected high number of "less healthy" (older age) enrolled insureds because of guaranteed issue, no annual/lifetime benefit limits and limited rating nature of ACA qualified insurance policies
- Big Time Project and Endeavor

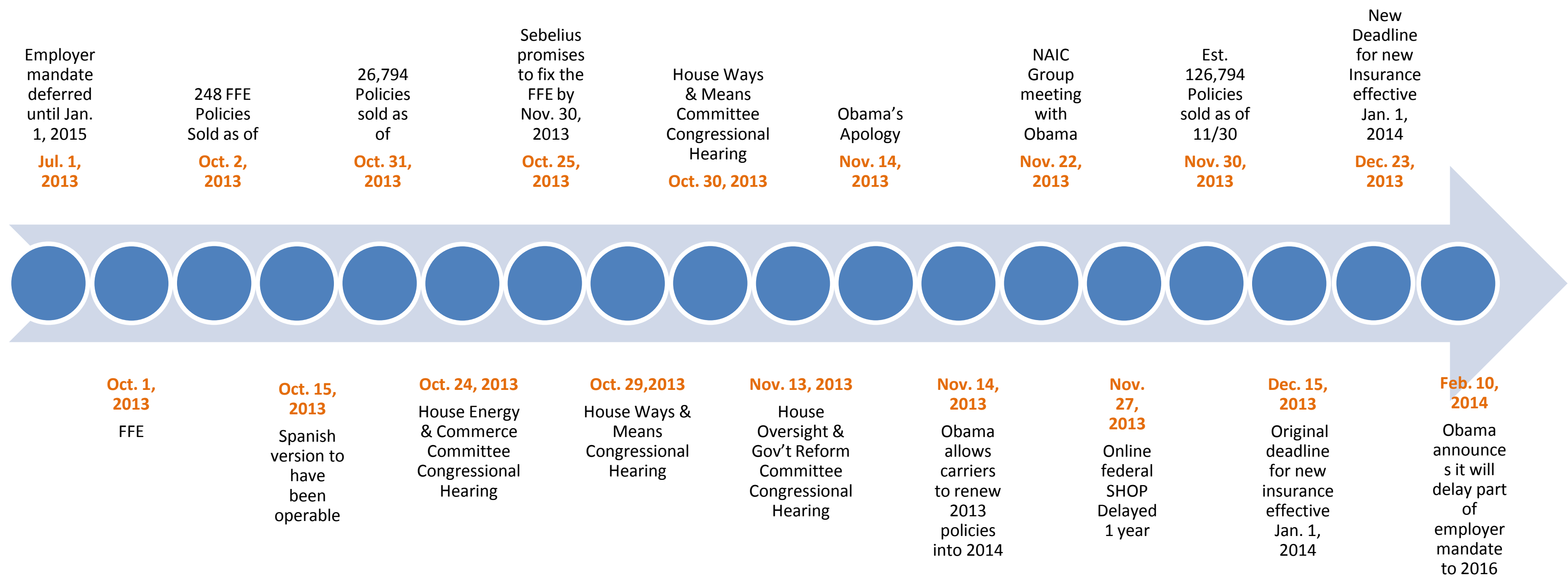
PPACA – Health Insurance Exchanges

- Individual and Small Group health insurance market participants
- Federally Facilitated Marketplace www.healthcare.gov
  - 34 states operate under the Federally Facilitated Marketplace
  - Estimated costs incurred so far to build is $400 million
  - Interfaces with multiple other federal agencies (IRS, DHS, SSA, etc.) and insurers
- State Operated Exchanges - 16 states operate their own health insurance marketplaces or in partnership with federal government; Florida announced it will operate one
  - But, many rely on systems interfacing with the Federally Facilitated Marketplace
- Small Business Health Options Program (SHOP) for employers with 50 and fewer full time equivalent employees (FFE and state exchanges)
- Navigators as means of consumer assistance
  - Estimated $67 million in total federal grants awarded
  - Friction element with state insurance regulation and long-standing health insurance agent/broker role; state insurance department licensing skirmishes
  - Effectiveness is questionable

Federal and State Health Insurance Exchanges Makeup



Federally Facilitated Marketplace's Launch "Attempt" Timeline



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Federally Facilitated Marketplace's Challenges and Problems

- Late start as key ACA regulations and website contractor engagements and development milestone dates were delayed due to 2012 election season
- Employer mandate delay raised credibility risk of any further ACA implementation delays
- FFE website launch amid first federal government shut-down in 17 years with Republicans' ACA de-funding maneuvers in play

Federally Facilitated Marketplace's Challenges and Problems

- Inoperability Issues of FFE website:
  - Significant lack of pre-launch, end-to-end testing of multi-integrated systems
  - Non-anonymous consumer shopping decision
  - Opening day and week high user volume blame game for inaccessibility to website
  - Many consumers couldn't create accounts, which was required to confirm eligibility and apply for insurance
  - "Waiting Room" Band-Aid made consumers more frustrated with the process
  - Long waits for consumer telephonic assistance further increased consumer frustration
  - Timed-out online user experience lead to password reset and new username hassles, even further increasing consumer frustration
  - High frequency of corrupted or inaccurate Forms 834 sent to insurers (20% est.)
  - Inability of navigators to provide any meaningful consumer assistance
  - Inability of CMS to report any real-time data on enrollments, publicly or to Congress
- Initial CMS spin that FFE website's dysfunctionality was not of a systemic nature or result of foreseeable problems has resulted in serious Executive Branch credibility issues

Notices of Cancellation of Policies Add Toxic Fuel to the Fire

- Millions (4-5 est.) of policy cancellation notices sent from August to November 2013, which shouldn't have been a surprise to anyone
- Not required by ACA, but driven by economics of compliance
- President Obama acknowledges Big Fumble and acquiesces to broken promise to Americans about being able to keep their current health plans
  - Former President Clinton voices support for keeping that promise
- Executive Branch pushes policy cancellation mess to the states
- Mixed bag on political party line reactions by state insurance commissioners
  - Some Democrat Insurance Commissioners (e.g., CA, NY, WA) not allowing 2013 policies to continue
  - Some Republican Insurance Commissioners (e.g., FL, TX) allowing 2013 policies to continue
  - Washington, DC Commissioner, William P. White, fired 1 day after criticizing Obama's proposed renewal of 2013 policies into 2014

Insurers' Choices and Reactions

- Cannot stop policy cancellations in certain states
- Uncertainty of action in states where insurance commissioners have been silent and not taken a position yet
- Some insurers have solicited 2013 "early renewals" with insurance department approval
- Pricing and actuarial assumptions of insurers for exchange –sold policies both for 2014 and 2015 may be significantly altered
- Some insurers examining ways to terminate FFE agreement and get off the FFE

Impact on State Insurance Departments

- Political quagmire again for most Republican insurance commissioners to maintain anti-ACA stance yet not be perceived as hurting constituent consumers by not allowing 2013 policies to continue into 2014
- Political quagmire again for some Democrat insurance commissioners to maintain pro-ACA stance yet may need to distance themselves from President Obama
- NAIC Contingent, Former Senator Ben Nelson (CEO), Donelon (LA), Leonardi (CT) and Goodwin (NC), Nov. 20, 2013 meeting with President Obama, K. Sebelius and G. Cohen
  - No NAIC consensus on renewal of 2013 policies into 2014
  - 6 Insurance Commissioners (FL, KS, MT, ND, PA and NH) snubbed meeting
  - Meeting was fodder to address NAIC concerns over Dodd-Frank Act matters
- President Obama's November 22, 2013 meeting with 14 major health insurers, which may be playing both sides of fence

PPACA – Health Insurance Exchanges

- Federal Exchange
  - Est. 3 million enrollments as of end of January 2014; 7 million enrollments goal for March 2014
  - 2013 policy renewals permitted into 2014 because of policy cancellation notices changes enrollment risk assumptions and created interesting political dynamics
- State Exchanges
  - Abysmal performance in CO, HA, MD, MN and OR and directors firings/resignations
  - CA and NY have respectable enrollment numbers
- Private Exchanges
  - Privately accessible health insurance policy websites
  - Primarily large employer market for defined contribution type of employee benefit offering of ACA compliant health plans to avoid employer paid ACA penalties
  - Offer both ACA compliant and non-ACA compliant health plans

Federal and State Exchanges Policy Sales Quick Fact Sheet

Exchange	10/2/13	10/31/13	11/30/13	12/31/13	2/1/14
FFE	248	26,794	110,206	1,196,400	1,939,588
CA	Unreported	35,364	107,087	498,794	728,086
CO	Unreported	3,736	9,980	50,125	68,454
KY	Unreported	5,586	13,145	33,036	48,611
ME	Unreported	Unreported	Unreported	Unreported	Unreported
MN	Unreported	1,774	4,478	19,420	28,611
NY	Unreported	16,404	45,513	156,902	211,290
OR	0	0	44	18,337	33,808
All state exchanges	Unreported	79,000	227,000	956,000	1,359,000

PPACA’s Reinsurance Program

- **What:** Essentially a government facilitated stop-loss program for individual insurance funded by all health insurance issuers and third party administrators (for employers)
- **Participants:**
  - Costs - all health issuers and TPAs contribute funding ($5.25 PMPM)
  - Benefits – all non-grandfathered individual market plans (inside and outside Exchanges)

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PPACA's Reinsurance Program

- **Payment levels:** Federal program expected to pay 80% of claim costs above \$60k and below \$250k
- **Timing:** Temporary, 2014-2016, Payments made throughout the year
- **Program Level:** Federal and State

PPACA's Risk Corridor Program

- **What:** Program to mitigate Qualified Health Plans losses and gains related to inaccurate rate setting. QHP issuers whose allowable costs exceed their target amount receive payments, while those which fall below their target amount pay into system
- **Participants:**
  - Costs – QHP issuers whose allowable costs are below 97% of target costs
  - Benefits – QHP issuers whose allowable costs are above 103% of target costs

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PPACA's - Risk Corridor Program

- **Payment levels:** QHP receives payment for amount equal to 50% of allowable costs over 103% and below 108% of the target amount; higher payments if allowable costs are over 108%
- **Timing:** Temporary, 2014-2016, payments made after reinsurance and risk adjustment payments
- **Program Level:** Federal only

PPACA's Risk Adjustment Program

- **What:** Program designed to make issuers indifferent to risk level of enrollees by transferring funds from issuers with a low risk score to issuers with a high risk score (based on insureds' age, sex and recorded diagnoses).
- **Participants:**
  - Costs – Issuers of individual and small group plans with a risk score below state average
  - Benefits – Issuers of individual and small group plans with a risk score above state average

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PPACA's Risk Adjustment Program

- **Payment levels:** Very complex formula
- **Timing:** Permanent, Payments made before June 30 of calendar year following the benefit year
- **Program Level:** Federal only

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Captive Insurer Arrangement Upheld by Tax Court

- ***<u>Rent-A-Center v. Internal Revenue Commissioner</u>*, (U.S. Tax Ct., January 2014)**
- Tax Court in a 9-6 opinion upheld deductibility of premiums paid by RAC's 15 brother-sister subsidiaries to captive insurer
- Legacy Insurance Company formed as Bermuda subsidiary of RAC to insure 15 other subsidiaries' workers' compensation, commercial auto and general liability risks
- IRS attacked $43mm in insurance premium deductions over 5 year period
- Legacy permitted by Bermuda Monetary Authority to treat deferred tax asset on Legacy's balance sheet for minimum solvency margin
- RAC guaranteed value of Legacy's deferred tax assets
- Legacy purchased RAC treasury shares which Bermuda Monetary Authority also allowed Legacy' to carry on its balance sheet for minimum solvency margin

Captive Insurer Arrangement Upheld by Tax Court

- ***<u>Rent-A-Center v. Internal Revenue Commissioner</u>*, (U.S. Tax Ct., January 2014) cont'd**
- Legacy formed for legitimate business (non-tax) purpose
- No impermissible circular flow of funds from insureds to RAC
- Legacy's premium-to-surplus ratio not indicative of a sham arrangement
- Insurance premiums paid to Legacy were deductible because:
  - Risk-Shifting by RAC subsidiaries to Legacy under Humana brother-sister arrangement balance sheet/net worth test because Legacy's claim payments did not reduce net worth of insureds as they didn't own stock of Legacy
  - Parental guaranty of Legacy's DTA did not negate risk shifting as guaranty did not affect insureds' balance sheets and cases of parental guaranty of captive reinsurer's reinsurance obligations to unaffiliated ceding primary insurers were distinguishable as Legacy wasn't undercapitalized
  - Risk-Distribution existed with 2,800 stores, 17,000 employees and 7,500 autos insured

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IRS's Loses on Cascading Federal Excise Tax on Reinsurance

- ***<u>Validus Reinsurance v. Internal Revenue Commissioner</u>*, (D.C. Dist. Ct., February 2014)**
- IRC 4371 imposes excise tax on insurance premiums paid to an alien insurer or reinsurer:
  - 4% on casualty insurance
  - 1% on life insurance, health insurance and annuity
  - 1% on reinsurance for any of above types of insurance contracts
- IRS Revenue Ruling 2008-15: Cascading FET position
- Validus paid taxes asserted by IRS and sued for tax refund
- Court held IRC 4371 does not apply to retrocessions of reinsurance, even where underlying insurance policies cover U.S. based risk, but did not based its ruling on basis that transaction was wholly between non-U.S. persons

National Association of Insurance Commissioners

- Divisive state of affairs and at critical point to maintain its relevancy
  - Internal governance dispute aired publicly at its December 2013 Meeting
  - Anxiety over how far FIO will seek to use its powers to exclusion of NAIC, especially in international insurance industry affairs, such as Solvency II
  - Attacks by [name of Congressman] calling NAIC out on its tax-exempt, non-governmental nature
  - PPACA's federal health insurance exchange stumbling launch created friction between White House and some Democratic Insurance Commissioners who have been staunch PPACA supporters

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Dodd-Frank Act's Impact on Insurance Industry

- Systemically Important Financial Institutions
- Federal Insurance Office
- Non-Admitted and Reinsurance Reform Act
- Consumer Financial Protection Bureau
- Insurance Product Exclusion from Swaps

Systemically Important Financial Institutions

- Financial Stability Oversight Counsel ("FSOC")
  - 15 Members
    - 10 Voting Members (Treasury, Fed, OCC, CFPB, SEC, FDIC, CFTC, FHFA, NCUA and **Insurance Expert** Presidential appointee (Roy Woodall)
    - 5 Non-Voting members (OFR, State Banking Regulator, State Securities Regulator, **FIO** (Michael McRaith) and **NAIC designee** (John Huff, MO Insurance Commissioner)
    - **Insurance Industry Representatives: 1 Voting member and 2 Non-Voting Members**
  - Designates SIFIs

What is a SIFI and Its Implications?

- Bank Holding Company/Bank with over $50 million of assets
- Non-Bank financial institutions with 85% or more of annual gross revenues from financial activities and 85% or more of total assets are financial assets related to financial activities
- SIFI's Implications:
  - Federal Reserve Board oversight
  - Subject to heightened prudential standards (increased capital requirements, risk-based capital stress-testing, liquidity risk management, debt-to equity limit)
  - Must create "living will" for recovery plan upon severe distress and orderly liquidation upon failure, subject to FDIC receivership authority bypassing Bankruptcy Code

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SIFIs Presently Designated

- Banks and Non-Insurance Non-Banks (9): Ally, American Express, BB&T, Capital One, Fifth Third, PNC, SunTrust, Regions and US Bancorp.
- Insurance Holding Companies (3):
  - AIG, GE Capital and Prudential Financial (initially resisted) designated in 2013
  - MetLife in stage 3 review but sold its bank to GE Capital in 2013 to de-risk
  - Berkshire Hathaway under consideration and others may follow
- Global Systemically Important Financial Institutions (G-SIFI) and Global Systemically Important Insurers (G-SIIs)
  - Financial Stability Board and G20
  - International Association of Insurance Supervisors
  - US Insurers: AIG, MetLife and Prudential Financial designated in 2013

Federal Insurance Office-Basics

- FIO is an agency within Treasury Department
- Michael McRaith (former IL Insurance Director) is first FIO Director, appointed by Secretary of Treasury
- DF Act does **not** grant FIO or Treasury Department any general supervisory or regulatory over business of insurance
- FIO's areas of authority extends to all lines of insurance other than health, long-term care and crop insurance
- Federal Advisory Committee on Insurance formed by FIO in 2011 (insurance industry executives, commissioners and academicians) to advise FIO Director

Federal Insurance Office's Authority

- Monitor insurance industry, including regulatory gaps that could contribute to systemic crisis in insurance industry or US financial system
- Monitor access of traditionally underserved communities, minorities and low/moderate income persons to affordable insurance products
- Recommend to FSCO designation of an insurer as non-bank SIFI
- Assist in administration of Terrorism Risk Insurance Act
- Coordinate Federal efforts and develop Federal policy on prudential aspects of international insurance matters
- Determine whether state insurance measures are preempted if resulting in less favorable treatment of non-US insurer of country with covered agreement with US than an insurer domiciled in the state
- Consult with states about national insurance matters and prudential international insurance matters
- No enforcement or rule making authority but has data call power

Federal Insurance Office

- FIO Report: “How to Modernize and Improve the System of Insurance Regulation in the United States” (Dec. 2013, but was due Jan. 2012)
- Near-Term State Reforms:
  - Insurers’ Capital Adequacy
  - Insurers’ Resolution Practices
  - Insurance Marketplace Regulation
- Areas for Direct Federal Regulation:
  - Oversight of mortgage insurers
  - NARAB II
  - NRRA
  - Uniform treatment of reinsurers for reinsurance collateral
  - Consumer products (auto insurance for military and rate regulation to maximize number of personal lines insurers
- Federal Standards Implemented by States v. Direct Federal Regulation

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Federal Insurance Office

- FIO's Director is a voting member of International Association of Insurance Supervisors having obtained a member seat formerly held by the NAIC
- FIO positioning itself as U.S. lead on international solvency standards for U.S. insurers, which makes NAIC anxious as it tries to roll-out enterprise risk and ORSA filing requirements for insurers and remain in the game of international capital standards for insurers

Non-Admitted & Reinsurance Reform Act

- Addresses Surplus Lines Insurance and Reinsurance
- Result of years of legislative efforts to redress perceived duplicative and inconsistent laws in surplus lines insurance and reinsurance areas
- Represents direct attack on McCarran-Ferguson Act
- Federal preemption is in effect
- But insurance industry very much supported act
- NRRA represents duality of federal and state insurance laws, as with health insurance and maybe insurance producer licensing
- NRRA seems to be working just fine

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NRRA-Surplus Lines Insurance

- Simplifies of Insurers' Entry into Surplus Lines Market:
  - States cannot prohibit surplus lines broker from placing insurance with alien insurer listed on NAIC Quarterly List of Alien Insurers
  - Prohibits states from imposing eligibility requirements on non-admitted insurers domiciled in other state except requirements in NAIC Nonadmitted Insurer Model Act or adopted universally by states
- Requires states to exempt large qualifying commercial insureds from surplus lines insurance laws, including broker diligent search requirement
- Simplifies Taxation of Multistate Surplus Lines Insured Risks
  - Prohibits states other than home state of insured from imposing premium tax on insurance placement
  - "Home State" is PPB of insured or if risk is in another state(s), then state with greatest allocation of premium for insurance contract

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NRRA-Surplus Lines Insurance

- States can enter into compact to allocate premium taxes paid to home state
- NAIC adopted Nonadmitted Insurance Multistate Agreement (NIMA)
  - 6 Participating States: FL (clearinghouse), LA, SD, UT, WY and PR
  - HA and NV exited in 2012
- NCOIL adopted Surplus Lines Insurance Multi-State Compliance Compact (SLIMPACT)
  - 9 Participating States: AL, IN, KS, KY, NM, ND, RI, TN and VT
- 49 states have NRRA enacted laws
  - GA adopted 2012 law allowing adoption of either SLIMPACT or NIMA, but neither has been chosen yet
  - Many states don’t want to give up surplus broker tax revenue

NRRA-Credit for Reinsurance

- Prohibits states from denying credit for reinsurance if credit is permitted by ceding company's domiciliary state if it is NAIC accredited
- Preempts extraterritoriality application of non-domiciliary states' laws governing reinsurance agreements, except taxes, that:
  - Prohibit use of Federal Arbitration Act
  - Require a certain state's laws to be governing law
  - Otherwise apply its laws to non-domiciliary ceding insurers
- Likely preempts "Commercial Domicile" laws
- Reserves sole responsibility for regulating reinsurer's solvency to state of domicile
- CA and NY were main targets of law

Consumer Financial Protection Bureau

- Established to address "widespread failures in consumer protection and rapid growth in irresponsible lending practices."
- New independent federal agency within Treasury Department but fairly autonomous
- Single Director appointed by President and confirmed by Senate for 5 year term, Richard Cordray
  - Former Ohio Attorney General
  - "Recess" Appointed by President in 2012 following Elizabeth Warren's departure as de facto initial Director
  - Confirmed by Senate in July 2013, but had acted in limbo initially because of Senate confirmation blockage threat and questionable appointment based on <u>Canning v. NLRB</u> recess appointment case
- Many inherited laws: TILA, RESPA, FDCPA, FCRA, EFTA, some FTC
- Deep Partisan Congressional Divide over CFPB
  - Budget process and free-spending:
    - FY 2013 ($541mm); FY 2014 ($497mm)
    - Outside of Congress' appropriations process for agency independence, but cap of 11% of Fed's 2009 operating expenses
  - Single Director's power concentration v. multi-member council structure
  - About 1,300 employees

CFPB Constitutional Challenges

- State National Bank and 11 AGs v. CFPB, Treasury Dept., SEC et al. – separation of powers case dismissed by D.C. District court for lack of standing in August 2013, but appeal has been filed
- Pisinski and Morgan Drexen v. CFPB (D. Ct., D.C.) – filed in July 2013 by bankruptcy lawyer and debt relief services firm that supplied paralegals in response to CFPB CID and alleges separation of powers violation and challenge to CFPB's threat of Telemarketing Sales Rule enforcement action, but CFPB obtained motion to dismiss in October 2013, but appeal has been filed
- CFPB v. Morgan Drexen (D. Ct., C.D. Cal.) – countersuit filed by CFPB alleging TSR and UDAAP violations for MD's collection of up-front consumer fees

CFPB Powers, Duties and Focus

- Powers and Duties:
  - Regulations – FSOC can review and overturn
  - Consumer financial education
  - Monitor financial markets for new risks to consumers
  - Consumer complaints collection
  - Examinations/Investigations – Civil Investigative Demand
  - Civil penalties (fines, disgorgements and restitution)
  - Criminal Referrals to DOJ and other federal agencies
- Focus:
  - Directly on consumers, rather than bank safety and soundness or monetary policy
  - Heighten government accountability by consolidating in one place responsibilities that had been scattered across federal government
  - Exercise responsibility for supervision and enforcement of consumer protection laws for providers of consumer financial products/services that escaped regular Federal regulatory oversight
  - Unfair, deceptive or abusive acts and practices ("UDAAP")

Consumer Financial Products/Services

- Extending credit and loan servicing
- Extending/brokering real/personal leases with purchase financing functional equivalency
- Real estate settlement services
- Deposits, transmitting or custodian of funds
- Stored value/payment instruments
- Check cashing, collection or guaranty services
- Payments or financial data processing services
- Financial advisory services not
  SEC regulated
- Consumer reporting agency
- Consumer debt collection

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Exemptions and Additions to Consumer Financial Products/Services

- Securities Products regulated by SEC and state securities commissioners exempt
- "Business of Insurance" exempt because of McCarran-Ferguson Act's preservation of state regulation of insurance (for now at least)
  - Indirect Auto Finance Loans / Service Providers Regulated
    - Disparate Impact Discrimination
    - Auto service contracts may not be within insurance exemption
- CFPB by regulation can add new consumer financial products/services if:
  - Purpose of product/service is to evade federal consumer financial law; or
  - Product/service can be offered by bank or financial holding company under federal law and likely to have material impact on consumers

CFPB Regulations Involving Insurance Products

- Lender-Placed Home Insurance - Mortgage Loan Servicers
  - RESPA Regulation X amended in 2013 to enhance transparency of forced-placed insurance and new borrower protection rules
  - Could migrate to lender-placed auto insurance
- Financing of Credit Insurance – Loan Originators Compensation Requirements under Truth in Lending Act (Reg. Z) prohibits mortgage lenders from financing single premium credit insurance (life, disability, health, unemployment and property) in connection with consumer credit transaction secured by a dwelling
  - Excludes monthly premium payment credit insurance
  - Excludes credit unemployment insurance if premiums reasonable and insurer is not affiliate of lender

Major CFPB Consent Orders with Banks and Credit Card Companies

Company	Consent Order Date	Fine	Restitution
AMEX	December 2013	$2mm	$18.6mm
Ally Financial	December 2013	$18mm	$80mm
Cash America	November 2013	$5mm	$8mm
JP Morgan/ Chase	September 2013	$20mm	Est. $309mm
AMEX	October 2012	$14.1mm	$85mm
Discover Bank	September 2012	$7mm	$200mm
Capital One	July 2012	$25mm	$140mm

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CFPB Consent Orders with Lender-Placed Insurance Companies

Alleged illegal kick-backs by forced-placed insurers to mortgage lenders through their captive reinsurers

Company	Consent Order Date	Fine	Restitution
Republic Mortgage	November 2013	$100k	None
Radian Guaranty	April 2013	$3.75mm	None
United Guaranty	April 2013	$4.5mm	None
Genworth Mortgage	April 2013	$4.5mm	None
MGIC	April 2013	$2.65mm	None

Dodd-Frank Act – Regulation of Swaps

- Swap was redefined by Dodd-Frank Act so broadly that literally read all insurance contracts would be swaps
- In joint regulations of SEC and CTFC finalized in 2012, insurance industry carved out an exemption for insurance products
- Insurance Safe Harbor must meet:
  - Insurance Product Test or be Enumerated Insurance Product; and
  - Insurance Provider Test

Dodd-Frank Act – Regulation of Swaps

- **Insurance Product Test**:
  - Beneficiary of contract must have insurable interest in covered risk and carry risk of loss continuously throughout duration of contract;
  - Loss must occur and be proved and indemnification is limited to value of insurable interest;
  - Contract is not traded, separately from insured interest, on an organized market or over-the-counter
  - For financial guaranty insurance, acceleration of policy in event of payment default or insolvency of obligor must be at sole discretion of insurer

Dodd-Frank Act – Regulation of Swaps

- **<u>Enumerated Insurance Products</u>**:
  - Surety and Fidelity insurance
  - Life and Health insurance
  - Long-term care insurance
  - Title insurance
  - Property and Casualty insurance
  - Annuities
  - Disability insurance
  - Private mortgage insurance
  - Reinsurance/retrocessions of reinsurance so long as not done via a swap
- Does not cover guaranteed investment contracts, funding agreements, industry loss warrants or catastrophe bonds

Dodd-Frank Act – Regulation of Swaps

- **<u>Insurance Provider Test</u>**:
  - Provider is person subject to supervision by insurance commissioner or by U.S. and agreement is regulated as insurance under state or federal law; or
  - Provider is U.S. or state, or product is pursuant to statutorily authorized program of the U.S. or a state; or
  - For reinsurance, provider's agreement is with another person (cedent) that satisfies Provider Test, provided that: (i) reinsurer is not prohibited by state or federal law from offering agreement to cedent that satisfies the Provider Test; (ii) underlying reinsured agreement satisfies Product Test or is an Enumerated Product; and (iii) except as permitted under state law, total amount reimbursable by all reinsurers for such agreement does not exceed the claims or losses paid by cedent; or
  - For non-admitted (surplus lines) insurance, provider is located outside U.S. and listed on Quarterly Listing of Alien Insurers of NAIC or meets eligibility criteria for non-admitted insurers under state law

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Terrorism Risk Insurance Act

- Terrorism Risk Insurance Act adopted in 2002
- Requires insurers to make terrorism insurance coverage available for most commercial lines insurance
- Provides federally funded reinsurance program for certified acts of terrorism in U.S.
- Original expiration on December 31, 2005, but renewed for 2 years by Terrorism Risk Insurance Extension Act of 2005
- Renewed 2nd time in December 2007 by Terrorism Risk Insurance Program Reauthorization Act of 2007
- Current Act will expire on December 31, 2014
- Congress is expected to renew this year
- Significant recent growth in Cyber-Terrorism is a major renewal argument, but others argue U.S. should not be providing bail-out funding and private market can absorb terrorism risks
- In 2013, insurers began sending conditional renewal notices to exclude terrorism risk coverage for insurance policies with 2014 renewal dates in the event Congress does not renew TRIA

National Association of Registered Agents and Brokers

- NARAB I was part of the Financial Services Modernization Act of 1999 a/k/a Gramm-Leach-Bliley Act
- Purpose was to push states to adopt uniform and reciprocal licensing laws for insurance producers
- If a majority of states did not accomplish that by October 2002, then a federally established NARAB would have been created to make that happen
- NAIC promulgated its Producer Licensing Model Act in 2002, which a majority of states adopted before October 2002 deadline
- But, several large states, such as CA, FL and NY have never embraced the PLMA with result that true, national uniformity does not exist

National Association of Registered Agents and Brokers

- NARAB II, HR 1155, the National Association of Registered Agents and Brokers Reform Act of 2013
- Passed House in September 2013 and Senate in January 2014
- Doesn't displace state insurance departments and NAIC would effectively control
- NAIC supports the legislation
- NCOIL is neutral on the legislation
- Insurance agent and brokers trade associations staunchly support the legislation
- Similar bills have been in same position twice before, but full Senate did not pass them
- Example of FIO's federal standards with state implementation approach

Housing and Urban Development's Disparate Impact Regulation

- Major issue for homeowner's insurance companies using credit scores as underwriting criterion
- **<u>Mount Holly</u>** case settled just before oral arguments before Supreme Court were set to occur
- American Insurance Association and National Association of Mutual Insurance Companies sued HUD in June 2013 to challenge its Disparate Impact Regulation
- Resolution of issue will affect CFPB's aggressive enforcement actions against lenders with limited substantiation of actual disparate impact

QUESTIONS? ANSWERS!

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