

FS Regulatory Briefs*

Federal Charter Bill Introduced in Congress

On April 2, 2009, H.R. 1800, the [National Insurance Consumer Protection Act \(NICPA\)](#), was introduced in the U.S. House of Representatives by Reps. Melissa Bean (D-IL) and Edward Royce (R-CA). In line with prior legislation seeking to introduce an Optional Federal Charter (OFC), NICPA would pre-empt state insurance laws and establish a federal system of regulation and supervision for national insurers and insurance producers. As with the dual system of regulation utilized for the banking sector, insurers and producers are free under NICPA to elect federal or state regulation. State insurance departments would retain authority for regulating state-licensed insurers and producers.

Bill Overview

The NICPA creates an independent Office of National Insurance (ONI) within the Department of the Treasury to serve as the chief regulator of national insurers. The Bill authorizes the ONI to charter national life insurers, national property and casualty insurers, reinsurers and national insurance agencies, and it also provides for the licensing of federal insurance producers. Under NICPA, a holding company may own both state and federal of insurers, although the underwriting operations of state and federal insurers must remain separate. There are provisions in NICPA allowing for an existing insurer to automatically convert to a national insurer.

ONI's Commissioner would be appointed by the President for a five-year term, subject to Senate approval. The oversight and enforcement powers of the National Insurance Commissioner are generally consistent with the powers afforded most state commissioners. However there are a number of areas, some of which are set forth below, where federal insurance regulation as proposed by NICPA would depart from the state schemes currently in place. In addition, there are many NICPA provisions that have not been featured in previous OFC legislation.

Notable Changes from Prior OFC Proposals

NICPA differs from prior OFC bills in the following ways:

- **Systemic Risk Regulator:** NICPA requires the establishment of Systemic Risk Regulator housed outside ONI to be designated by the president to review and examine insurers, state and federal, and their affiliates, as well as participate in examinations by state insurance regulators in order to determine if an insurer or its products "is having, or would have, serious adverse effects on economic conditions or financial stability." The Systemic Risk Regulator has broad authority to remediate such a state, including the power to prohibit activity by an insurer or the sale of the products at issue. In addition, the Systemic Risk Regulator, in conjunction with the Commissioner may make a determination as to which are systemically important and may be required to convert to federal regulation.
- **Coordinating Council for Financial Regulators:** Comprised of federal financial regulators, including the National Insurance Commissioner, and presidential appointments, the Council would collectively identify and set policy issues related to the health and competitiveness of the financial services industry. In addition the Council is charged with the responsibility of coordinating activity among state and federal financial regulators and with developing model supervisory policies for state and federal financial regulators.
- **Consumer Protections:** NICPA calls for a Division of Consumer Affairs (DCA) to be led by a Director under the National Commissioner's supervision. The DCA is required to maintain a branch in each state. The DCA would also maintain a national hotline and website for complaint reporting, and would report to Congress annually regarding complaint volume and handling.

- **National Holding Companies Regulation:** NICPA grants the National Insurance Commissioner authority to subject national holding companies to capital, liquidity, dividend, operational, and any other standards that the Commissioner deems appropriate to ensure their solvency and sound operation.
- **More Frequent Examinations:** Under NICPA national insurers would be subject to examinations every 2 years (compared to every 3 years in prior bills).
- **National Guaranty Association:** NICPA establishes a National Insurance Guaranty Corporation (NIGC), which will assume obligations to policyholders, up to limits based on those set by NAIC model laws, when a national insurer is placed into receivership. The NIGC would be funded by as-needed assessments on national insurers at the line of business level. National insurers will also be required to participate in state guaranty associations for a line of insurance in each state in which they are doing business. Prior OFC proposals did not include such dual federal/state guaranty fund participation requirements.
- The promulgation of financial solvency regulations for national insurers and agencies, including those related to accounting and disclosure; auditing, risk management, internal controls, investments, capital and liquidity, actuarial opinions, and reinsurance. The Commissioner is directed to consider the comparable NAIC models in these areas but is not compelled to adopt them.
- The filing of policy contracts prior to use together with a company certification that it complies with ONI requirements; however, the Commissioner may not require a national insurer to adopt any particular “rate, rate element or price”;
- The adoption of NAIC Unfair Claims and Settlement Practices Models;
- Disclosures on policies providing notice that a policy was issued by a national insurer and directing questions and inquiries to the local Division of Consumer Affairs office;
- Prior Commissioner approval of certain transactions, including the acquisition of subsidiaries, demutualizations, mergers, asset transfers etc.;
- The creation of a National Insurance Fraud Division and Director and an Ombudsman to resolve issues arising between a national insurer and the ONI;
- Insurers to supervise national insurance producers that are not affiliated with a national agency;
- National Insurance Holding Companies to be subject to reporting requirements, examination, and financial solvency provisions to be enacted by the Commissioner, and;
- That all reinsurance pools involving a national insurer be subject to ONI jurisdiction.

Key NICPA Provisions

In addition to the foregoing, NICPA requires:

- The promulgation of regulations on prudential supervision, including mandates for national insurers, agencies and producers to implement risk management processes to detect and prevent violations, and to self report violations.
- “Full-scope, on-site” examinations of national insurers no less than once every twenty-four months;
- The Commissioner to investigate an insurance agency after a consumer complaint or evidence of existing or pending violations by a national insurer;
- GAO to set the standards for ONI to take prompt corrective action to resolve the hazardous financial condition¹ of a national insurer;

In addition, NICPA authorizes the National Insurance Commissioner to:

- Preside over a streamlined process to allow for contractual novations related to loss portfolio transfers, which the bill refers to as bulk transfers. Although such transfers require prior approval by the National Commissioner, the Commissioner is authorized to approve the transaction and order a novation after notice and a hearing without the need for policyholder approval in most instances;

¹ Defined in a comparable NAIC model as “whether the continued operation of any insurer ... might be deemed to be hazardous to the policyholders, creditors or the general public.”

- Coordinate global efforts and contract with foreign insurance regulators and regulatory organizations in order to stabilize the insurance market, promote fair competition among insurers and improve the quality of global insurance supervision; and
- Appoint a conservator or receiver of an impaired or insolvent national insurer.

State Provisions Not Subject to Pre-emption

Though primarily subject to federal regulation, National Insurers and Agencies, and federally-licensed producers, would be subject to the following types of state laws:

- Tax laws;
- Unclaimed property and escheat laws;
- Laws related to participation in assigned risk plans and other mandatory residual market mechanisms;
- Laws that provide for compulsory coverage of workers' compensation or motor vehicle insurance;
- Laws requiring statistical reporting or participation in advisory organizations unrelated to rates; and
- Laws requiring participation in workers' compensation administration mechanisms.

Bill Status

The NICPA has been referred to the House's Committee on Financial Services, and to the Committees on the Judiciary, and Energy and Commerce. No hearings have yet been scheduled on the Bill and no companion legislation has yet been introduced in the Senate.

Administration's Position Unclear

During his Congressional testimony on March 26, 2009, Treasury Secretary Geithner fell short of advocating for an Optional Federal Charter. While Secretary Geithner stated "(t)here's a very good case for optional federal charter legislation to be introduced," he also indicated that his recommendation on a systemic risk regulation is "fully compatible" with the state regulation of insurance and not meant to "supplant or take away the authority states have over insurance companies." We are not otherwise aware of any comments by the administration on NICPA to date.

Additional Information

If you would like additional information about the topic discussed in this FS Regulatory Summary, please contact:

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