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CROSS PRACTICE ISSUES

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2021 Academy Legislative/Regulatory Review

The American Academy of Actuaries presents this summary of select significant regulatory and legislative developments in 2021 at the state, federal, and international levels of interest to the U.S. actuarial profession as a service to its members.

Introduction

The Academy focused on key policy debates in 2021 regarding pensions and retirement, health, life, and property and casualty insurance, and risk management and financial reporting.

Responding to the COVID-19 pandemic, addressing ever-changing cyber risk concerns, and analyzing the implications and actuarial impacts of data science modeling continued to be a focus in 2021. Practice councils monitored and responded to numerous legislative developments at the state, federal, and international level. The Academy also increased its focus on the varied impacts of climate risk and public policy initiatives related to racial equity and unfair discrimination in 2021.

The Academy continues to track the progress of legislative and regulatory developments on actuarially relevant issues that have carried over into the 2022 calendar year.

Practice Area Issues

Casualty Practice Issues

Auto Insurance

On July 26, the Casualty Practice Council's (CPC) Automobile Insurance Committee submitted comments to the U.S. Department of the Treasury's Federal Insurance Office (FIO) following the FIO's request for information (RFI) relating to their work on monitoring the availability and affordability of automobile insurance.

Climate Change/Climate-Related Financial Risks

On June 11, the Academy's Climate-Related Financial Disclosures Work Group and the Actuaries Climate Index/Actuaries Climate Risk Index Work Group jointly submitted comments to the Securities and Exchange Commission following their request for public input on climate change disclosures. On June 23, the work groups also submitted comments to the New York State Department of Financial Services on financial risks related to climate change.

On November 15, the Academy's Climate Change Joint Task Force submitted comments to the FIO regarding its RFI on future work relating to the insurance sector and climate-related financial risks. Among other topics, the task force's comments address the *Executive Order on Climate-Related Financial Risk*, FIO's climate-related priorities, and insurance supervision and regulation.

Cyber Risk

On January 7, the Academy's Cyber Risk Task Force responded to FIO's questions about the applicability of the Terrorism Risk Insurance Act (TRIA) in cases of cyber-attacks that are aimed at targets outside the U.S. but cause insured losses in the U.S. The task force also noted the potential difficulty of meeting TRIA's requirement for an official finding that the source of an attack was a non-governmental terrorist organization.

In August, the CPC's Cyber Risk Task Force released the *Cyber Risk Toolkit*, a compendium of CPC publications related to cyber risk. The toolkit is intended to be a helpful resource for the public, public policymakers, the actuarial profession, the insurance sector, and other stakeholders. The toolkit includes sections dedicated to describing the cyber threat landscape, "silent" cyber threats, an introduction to cyber data, cyber risk accumulation, cyber risk reinsurance issues, and ransomware. The toolkit was also featured in a webinar, *Cyber Risk Trends and Issues in Insurance*, hosted by the task force on August 26.

National Flood Insurance Program

Negotiations in Congress on spending and appropriations legislation led to numerous temporary extensions of the National Flood Insurance Program (NFIP) in 2021. On September 30, Congress passed and President Biden signed H.R. 5305, the Extending Government Funding and Delivering Emergency Assistance Act, a stopgap spending measure which allocated funding through December 3, 2021 in order to avoid a government shutdown. The law included a $28.6 billion appropriation for disaster aid and authorized an extension of the NFIP at fiscal year 2021 levels. On December 3, 2021, President Biden signed H.R.6119, the Further Extending Government Funding Act that included an extension of the NFIP's authorization through February 18, 2022.

In 2021, the Federal Emergency Management Agency (FEMA) implemented a new risk rating system dubbed "Risk Rating 2.0." The agency claims the updated rating methodology will be more "actuarily sound, equitable, easier to understand and better reflect a property's flood risk." Risk Rating 2.0 applies to policies with a start date of October 1, 2021, or later, while policies renewing on or after April 1, 2022 will be subject to the new rating methodology.

On September 22, a coalition of nine U.S. senators led by Bob Menendez (D-NJ) and Bill Cassidy (R-LA) submitted a letter to FEMA over concerns that 80 percent of policyholders will see premium increases nationwide and as a result about 900,000 policyholders will drop out of the NFIP over the next decade.

Risk-Based Capital

In March, the CPC's Risk-Based Capital (RBC) Committee issued a report to the National Association of Insurance Commissioner's (NAIC's) Property and Casualty Risk-Based Capital (E) Working Group indicating line of business underwriting risk factors for the Property and Casualty (P&C) RBC Formula.

Unfair Discrimination

On March 31, the CPC submitted a comment letter on the since-enacted Colorado Senate Bill 21-169. The law intends to protect consumers from unfair discrimination in insurance practices. Recently, Academy President Maryellen Coggins sent a letter to Colorado Insurance Commissioner Michael Conway on the new law. The statute, enacted last July, prohibits unfair discrimination based on certain personal characteristics—race, color, national or ethnic origin, religion, sex, sexual orientation, disability, gender identity, or gender expression—in any insurer practice. The Colorado Division of Insurance is beginning to gather stakeholder input in advance of a rulemaking based on the new law.

Health Practice Issues

Affordable Care Act

On June 21, the United States Supreme Court declined to hear appeals brought by health insurance companies seeking full reimbursement for cost-sharing reduction payments from the federal government under a provision of the Affordable Care Act (ACA). The insurers' writ of certiorari for appeal before the Court had stated they were owed reimbursements for each year they did not receive federal government payments.

On June 17, in the case *California v. Texas*, the United States Supreme Court again upheld the Affordable Care Act by ruling that Texas and other states challenging the constitutionality of the ACA's individual mandate (a provision requiring individuals to purchase minimum essential coverage or face a tax penalty) on the basis of taxation did not have legal standing to do so.

Alzheimer's Disease Treatment

On June 7, the Food and Drug Administration (FDA) approved the use of Biogen Inc.'s aducanumab (to be sold using the commercial name "Aduhelm") to treat patients with Alzheimer's disease. The FDA approved the drug for use using their Accelerated Approval Program, which expedites the development and review of drugs based on preliminary evidence rather than definitive measures of clinical benefits. At the time of approval Biogen priced Aduhelm at $56,000 per year for consumers, but later reduced its price to roughly $28,000 annually for a course of treatment. The move prompted Health and Human Services (HHS) Secretary Xavier Becerra on January 10, 2022, to instruct the Centers for Medicare & Medicaid Services (CMS) to reassess the 2022 Medicare Part B premium.

American Rescue Plan Act (ARPA)

On March 11, President Biden signed the COVID-relief-focused American Rescue Plan Act of 2021 (H.R.1319) into law. Among other provisions, the law provides a two-year fiscal incentive to encourage states to adopt a permanent expansion of Medicaid to cover individuals in the "coverage gap" (those that do not qualify for Medicaid but have incomes below poverty levels and thus are ineligible for premium subsidies in ACA marketplaces).

Further Implementation of the No Surprises Act

The Biden Administration and numerous federal agencies took steps to further implement the *No Surprises Act*, a law that protects patients from "surprise medical bills" under certain conditions enacted through the Consolidated Appropriations Act ("the Act"), 2021 (H.R. 133, Division BB – Private Health Insurance and Public Health Provisions). On September 30, the Department of HHS/CMS, Department of Labor (DOL)/Employee Benefits Security Administration, Department of the Treasury (Treasury) (collectively "the Departments"), and the Office of Personnel Management (OPM) issued an interim final rule with a comment period to further implement the law. The Departments and OPM also issued rulemaking seeking to collect air ambulance plan data and CMS issued rulemaking on consumer protections related to surprise medical billing.

On June 25, the Academy's Health Practice Council's Individual and Small Group Markets Committee and the Active Benefits Subcommittee submitted comments to the Departments of HHS, Labor, and Treasury as those agencies worked to develop proposed rules related to the *No Surprises Act*.

Health Disparities

On October 29, the American Academy of Actuaries Health Equity Work Group issued a request for information (RFI) to solicit input on its work assessing whether and how health actuarial practices and methods affect health disparities with comments due by February 15, 2022.

Long-term Care Insurance

On June 30, U.S. Representative Thomas Suozzi (D-NY-3) introduced the Well-Being Insurance for Seniors to be at Home (WISH) Act (H.R. 4289) to create a public catastrophic long-term care insurance program. The program would be financed by a payroll tax of 0.3 percent for workers and 0.3 percent for employers, or about $300 per year for a median wage worker. The program would pay out a monthly cash benefit of about $3,600 (indexed to inflation), estimated to be enough to pay for six hours of in-home care daily, but would be flexible for other long-term services and supports. The bill is currently before the House Ways and Means Subcommittee on Social Security.

Medicaid

On January 28, 2021 the Biden Administration issued Executive Order 14009. The Executive Order called for efforts to protect and strengthen Medicaid and directed a review of waivers that may reduce coverage or undermine Medicaid. On December 13, the Administration issued an Executive Order focused on streamlining Medicaid eligibility and enrollment processes and increasing efforts to reach uninsured individuals who are eligible for Medicaid or Marketplace coverage. The Administration also issued final withdrawals of waivers that conditioned Medicaid eligibility on work requirements.

On February 12, the Academy's Health Practice Council (HPC) submitted a comment letter to Treasury, DOL, and HHS on review of agency actions related to the ACA and Medicaid as put forward in a presidential executive order. The letter links to previous Academy comment letters regarding relevant proposed rules.

Prescription Drug Prices

On July 9, the Biden Administration issued the *Executive Order on Promoting Competition in the American Economy* applying to a variety of business and financial sectors. The executive order:

- Directs the FDA to work with state governments to import lower-priced prescription drugs from Canada;
- Requires HHS to increase support for generic and biosimilar drugs; and
- Directs HHS to implement standardized health plan options in the National Health Insurance Marketplace; intended to make it easier for consumers to select their insurers.

Risk Adjustment Models

On November 24, the Risk Sharing Subcommittee submitted comments to the CMS Center for Consumer Information and Insurance Oversight (CCIIO) on the *HHS-Operated Risk Adjustment Technical Paper on Possible Model Changes*, which was exposed for comment on October 26.

Unfair Discrimination

The HPC submitted two comment letters on March 29 and April 30 to Colorado State Senator Janet Buckner regarding the potential impact to health insurance of Colorado Senate Bill 21-169, state legislation signed into law on July 6, aimed at protecting consumers from unfair discrimination in insurance practices.

Life Practice Issues

Group Term Life Insurance

U.S. Representative Michael Burgess (R-TX-26) introduced the Group Term Life Insurance Increase Act (H.R. 195) to increase the limit on the amount of employer-provided group term life insurance that an employee may exclude from gross income for income tax purposes. Currently, an employee may exclude from gross income up to $50,000 of the cost of group term life insurance plus any amount paid by the employee for the purchase of that insurance. The bill would increase the $50,000 limit to $375,000 and adjust the increased limit for inflation. The legislation is currently before the House Committee on Ways and Means.

National Association of Insurance Commissioners (NAIC)

On May 14, then-Academy President Tom Campbell submitted a letter to the NAIC Special Committee on Race and Insurance on proposed charges regarding property, casualty, and life insurance issues related to Workstream Three (property/casualty) and Workstream Four (life insurance and annuities).

On May 25, the Life Reserves Work Group submitted a comment letter to NAIC's Life Actuarial (A) Task Force (LATF) on amendment proposal form APF 2020-10, addressing the inclusion of future mortality improvement into principle-based reserving valuations.

On May 27, the C1 Work Group submitted a comment letter to the NAIC's Life Risk-Based Capital (E) Working Group on its exposures of proposed bond factors and instructions. In the comment letter the work group raises questions with certain areas of difference, including modeled loss experience, risk premium, discount rate, and modeling questions.

On June 14, the Life Reserves Work Group submitted a comment letter to NAIC's LATF on a Valuation Manual amendment proposal form regarding asset adequacy testing for reinsurance requirements.

On July 14, the Life Practice Council's (LPC) Life Reserves Work Group submitted a comment letter to the NAIC's LATF on a Valuation Manual amendment proposal form regarding asset adequacy testing for reinsurance requirements.

On July 16, the Annuity Reserves and Capital Work Group (ARCWG) submitted a proposed draft of revised NAIC VM-22 requirements for fixed annuity principle-based reserving framework.

On December 21, the Academy's C-2 Longevity Risk Work Group submitted comments to the NAIC's Longevity Risk (A/E) Subgroup regarding the reserve implications of expanding the scope of C-2 Longevity Risk-Based Capital requirements to include longevity reinsurance contracts in the proposed Principle-Based Reserving framework. On November 9, the LPC's C-2 Mortality Work Group presented to the NAIC's Life Risk-Based Capital (E) Working Group regarding its report on recommendations for updated C-2 factors.

Trusts

The House Ways and Means Committee approved draft legislation as part of congressional Democrats' proposed tax plan to fund President Biden's "Build Back Better" social and economic spending package, with potential impacts for life insurance. Specifically, the bill included provisions under Sec. 138209—Certain Tax Rules Applicable to Grantor Trusts—containing language intended by proponents to reduce the size of taxable estates at death for Americans holding life insurance policies. The language would have amended current law to require that life insurance in a grantor trust become a part of a person's taxable estate upon their death. Before the bill passed the House, lawmakers removed those provisions. The provisions could resurface in future deliberations on this bill or in other legislation.

Valuation Manual (VM)-22

On April 8, the LPC's VM-22 subgroup released *VM-22 In Brief*. The brief provides an overview of VM-22 requirements, which specify new interest rate requirements for reserves on single premium immediate annuities and similar contracts.

Pension Practice Issues

Financial Accounting Standards Board Funding Balances

On June 21, the Pension Committee submitted comments to the Department of the Treasury and Internal Revenue Service providing suggestions for potential modification of the rules relating to the maintenance and application of funding balance elections.

On September 22, the Pension Committee submitted comments to the Financial Accounting Standards Board (FASB) in response to their June 24 solicitation of stakeholder feedback on their future standard-setting agenda. The committee identified potential improvements to bring provisions of Topic ASC 715 up to date to reflect significant changes to pension plan design and utilization, as well as changes across the overall pension landscape, that have taken place since the current rules were last substantively reviewed. Major items the committee highlighted include liability measurements and consistency between plan types, amortization discrepancies between frozen and active plans, and accounting for plans that base benefits on the actual return of plan assets.

Environmental, Social and Governance (ESG) Issues

On October 13, the Department of Labor (DOL) announced the proposed rule *Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights*. The proposed rule would remove barriers to plan fiduciaries in considering climate change and other ESG factors when selecting investments and exercising shareholder rights. The proposed rule, according to DOL, was issued under the premise that climate change and other ESG factors can be financially material and that considering them will lead to better long-term risk-adjusted returns.

Life Expectancy

On December 22, the Pension Committee published an issue brief providing clarification of life expectancy estimates after the Centers for Disease Control and Prevention (CDC) published provisional life expectancy estimates in its *Vital Statistics Surveillance Report*.

PBGC Projections

On September 20, as required by the Employee Retirement Income Security Act (ERISA), the Pension Benefit Guaranty Corporation (PBGC) released the FY 2020 *Projections Report*, a ten-year forecast of the financial condition of PBGC's two insurance programs, the Single-Employer Program and Multiemployer Program. Per the *Projections Report*, the Multiemployer Program continues to report large deficits that are projected to grow over time to $6.7B by fiscal year 2030. However, this is a significant improvement over the last year's projection of deficits of $82.3B, largely due to the enactment of the American Rescue Plan Act of 2021 (ARPA). This projection delays the insolvency estimate to at least the mid-2030s. The *Projections Report* shows the Single-Employer Program continuing its well-funded financial position with the mean projected present value net financial position growing to $49.9B from $46.3B last year.

Pooled Employer Plans (PEPs)

On May 14, the Retirement System Assessment and Policy (RSAP) Committee released an issue brief detailing considerations employers might take in determining whether to participate in a PEP. Authorized by the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 (Pub.L. 116–94, signed into law as part of the Further Consolidated Appropriations Act of 2020), PEPs are multiple-employer retirement plans designed to streamline administrative processes and reduce the complexity for employers offering 401(k) retirement plans.

Social Security

On September 20, the Social Security Committee released an issue brief on the *2021 Social Security Trustees Report* examining the social insurance program's long-term solvency issues. The Social Security Committee also released an issue brief focusing on the implications of COVID-19 as reflected in the annual Social Security Trustees Reports from 2020 and 2021.

On January 18, 2022, the Office of the Chief Actuary of the Social Security Administration (SSA) released the *Summary of Provisions that Would Change the Social Security Program*, describing the impact of certain policy proposals on Social Security Trust Fund solvency. The publication includes cost estimates for a range of policy options which would address fund solvency and other issues related to Social Security benefits and financing.

Social Security Individual Equity/Social Adequacy

On May 12, the Social Security Committee released a monograph and an issue brief on the manner in which the principles of individual equity, basing a covered worker's benefit on the accumulated value of their contributions, and social adequacy, basing a covered worker's benefit on their deemed financial need, apply to social security reform options. Both documents compare three different Social Security reform proposals using individual equity and social adequacy and provide details on each of them while examining the data used in the illustrations.

Special Financial Assistance Program

On March 11, President Biden signed the American Rescue Plan Act (ARPA) of 2021 (Pub L. No. 117-2). Among other provisions, ARPA authorizes the PBGC to implement the Special Financial Assistance (SFA) Program. Launched on July 9, the SFA Program extends the solvency of certain financially troubled multiemployer plans by providing them with one-time payments so they can continue to pay all benefits and expenses through 2051. On July 9, the PBGC issued an interim final rule (published in Federal Register on July 12) implementing the SFA program, clarifying the calculation and amount of SFAs, and the order in which eligible plans will be permitted to file SFA applications. The Internal Revenue Service issued the corresponding guidance in Notice 2021-38 on requirements for sponsors of multiemployer pension plans.

On August 11, the Multiemployer Plans Committee submitted a comment letter to PBGC regarding its Interim Final Rule on Special Financial Assistance pursuant to ARPA.

Risk Management and Financial Reporting Issues

Big Data and Consumer Impacts

The Data Science and Analytics Committee (DSAC) released a major issue paper, *Big Data and Algorithms in Actuarial Modeling and Consumer Impacts*. The paper outlines how developments in big data and artificial intelligence (AI) may impact insurance offerings and their oversight. It also informs actuaries, regulators, legislators, and other interested stakeholders on the evolving impacts of big data and AI technologies on the oversight, accessibility, and sustainability of insurance since the publication of the *Big Data and the Role of the Actuary* monograph in June 2018.

On June 30, DSAC submitted comments in response to a joint request for information and comment from several federal agencies regarding financial institutions' use of AI and machine learning. The letter provides actuarial insights into the use of AI in the insurance sector.

Climate Change

On June 23, the Climate-Related Financial Disclosures Work Group and the Actuaries Climate Index/Actuaries Climate Risk Index Work Group submitted comments to the New York State

Department of Financial Services regarding its *Proposed Guidance for New York Domestic Insurers on Managing the Financial Risks from Climate Change*. On June 11, the Climate-Related Financial Disclosures Work Group and the Actuaries Climate Index/Actuaries Climate Risk Index Work Group also submitted joint comments to the Securities and Exchange Commission following the agency's request for public input on climate change disclosures.

Federal Insurance Office (FIO)

In June, the FIO released a report, *Study of Small Insurer Competitiveness in the Terrorism Risk Insurance Marketplace*. Per the Terrorism Risk Insurance Program Reauthorization Act of 2015 (Pub. L. 114-1, 129 Stat. 3) the Secretary of the Treasury is required to conduct a study of small insurers participating in the Terrorism Risk Insurance Program and identify any competitive challenges small insurers face in the terrorism risk insurance marketplace.

Among other items, the study must identify:

- Changes to the market share, premium volume, and policyholder surplus of small insurers relative to large insurers;
- How the property and casualty insurance market for terrorism risk differs between small and large insurers, and whether such a difference exists within other perils;
- The impact of the Program's mandatory availability requirement on small insurers; and
- The effect of increasing the Program Trigger on small insurers.

In September, the FIO released its *Annual Report on the Insurance Industry*, providing an overview of the FIO's statutory authorities and responsibilities, and summarizing its key activities since last year's report. The report also provides a discussion and analysis of the insurance industry's financial performance in calendar year 2020, its financial condition as of December 31, 2020, and insurance-industry-analysis through the first half of 2021.

The report also provides additional pandemic-related updates, addresses work on climate change and cyber insurance, and concludes with a discussion of international developments, including at the International Association of Insurance Supervisors (IAIS) and with respect to the covered agreements.

Financial Stability Oversight Council (FSOC)

The FSOC published its *2021 Annual Report*, providing an overview of the FSOC's activities, as well as describing significant financial market and regulatory developments over the past year, including insurance and accounting regulations and standards. The report focused on the recovery from and continued financial vulnerabilities of COVID-19, the financial condition of households and businesses, and asset valuation pressures amidst an improvement in the macroeconomic outlook and low interest rates.

In 2021, the FSOC identified a set of priorities for addressing risks and vulnerabilities in the U.S. financial system. The first is climate change and the prevalence of climate-related financial risks as an emerging threat to U.S. and global financial stability. On October 21, the FSOC issued a *Report on Climate-Related Financial Risk* that identified steps the FSOC and financial regulators can take to promote the resilience of the financial system to climate-related financial risks.

Another priority of the FSOC is addressing vulnerabilities in nonbank financial intermediation. Specifically, the potential for liquidation pressures to be amplified by financial vehicles like prime money market funds and open-end mutual funds. The FSOC's third priority moving into the new year is the resiliency of the U.S. Treasury market, specifically in the context of avoiding the Treasury market liquidity deterioration that occurred in March 2020 at the outset of the COVID-19 pandemic.

Insurance Capital Standard (ICS)

On January 15, the former Solvency Committee submitted comments to FIO regarding its *Study on the Insurance Capital Standard (ICS)*. The comments cover the effect of the ICS on the insurance market in the United States, the potential of the ICS to create regulatory capital arbitrage opportunities, and the type of information typically considered when evaluating the impact of ICS implementation on various business lines.

International Accounting Standards Board (IASB)

On November 26, the IASB released proposed amendments to IAS 7 and IFRS 7 for public comment; proposed changes in disclosure requirements intended to enhance the transparency of supplier finance arrangements and their effects on a company's liabilities and cash flows. The IASB put forth these proposed amendments after receiving feedback from industry professionals suggesting that the information an entity is required to provide about this form of financing does not meet user information needs. Comments are due to the IASB by March 28, 2022.

International Monetary Fund (IMF)

On October 4, the IMF released its *2021 Annual Report*, which provides an overview of the IMF's key roles in monitoring major factors affecting financial stability on an international level. The report also identifies new risks that have emerged as a result of unregulated portions of the financial system, and examines the results of its economic surveillance of international financial activity on a regional basis. Much of the analysis of the report assesses current accounting and financial reporting standards used across global markets and financial institutions.

Office of Financial Research (OFR)

On November 17, the OFR published its *2021 Annual Report to Congress*, describing key research findings and highlighting priorities for 2022. Overall, the report found that while the economy rebounded, and volatility caused by the pandemic subsided, monetary policy, inflation, and cyber-attacks could heighten systemic risk. Among other items, key findings from the report include:

- Macroeconomic uncertainty remains regarding the continuing impact of the virus and the pattern of inflation;
- Credit risk is a concern due to high debt burdens in some sectors that could worsen;
- Near-term market risks appear contained by the supportive nature of fiscal and monetary policies, solid corporate earnings, and risk-free rates at historically low levels; and
- The level of contagion risk for banks has reverted to more normal levels. However, vulnerabilities persist in connection with the central clearing process, resulting in potential sources of contagion risk.

If you have any questions regarding this ***Academy Alert***, please contact Samuel Owen, Risk Management and Financial Reporting Policy Analyst (owen@actuary.org; 202-785-6924).

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