DEPARTMENT OF THE TREASURY
FEDERAL INSURANCE OFFICE (FIO)
FEDERAL ADVISORY COMMITTEE ON INSURANCE (FACI)

MINUTES – June 4, 2020

The Federal Advisory Committee on Insurance (FACI) convened at 1:30 pm on 4 June 2020 via teleconference, with Dan Glaser, Chair, presiding.

In accordance with the Federal Advisory Committee Act, the meeting was open to the public.

Committee Members Present

DAN GLASER, Marsh & McLennan (Chair)
ERIC ANDERSEN, Aon
AMY BACH, United Policyholders
BIRNY BIRNBAUM, Center for Economic Justice
QUINCY BRANCH, Branch Benefits Consultants
LUKE BELLSNYDER, Texas Department of Insurance
(proxy for Kent Sullivan)
GREG CRABB, Amerisure
ROB FALZON, Prudential
DOUG HELLER, Consumer Federation of America
PETER KOCHENBURGER, UConn School of Law
GEORGE KEISER, North Dakota Legislative Branch
JAMES KELLEHER, Liberty Mutual
SEAN McGOVERN, XL CATLIN
ANDREW STOLFI, Oregon Department of Insurance
MARK THRESHER, Nationwide
BETSY WARD, MassMutual
BILL WHEELER, Athene

Also Present

STEVEN SEITZ, Director, Federal Insurance Office (FIO)
LINDSEY BALDWIN, Senior Insurance Regulatory Policy Analyst, FIO (Designated Federal Officer)
DAVID MAURSTAD, FEMA
GLENN POMEROY, California Earthquake Authority

Welcome and Opening Remarks

Chairman Glaser performed a roll call to confirm attendance on the call.

Chairman Glaser announced that the meeting would feature two guest speakers: Glenn Pomeroy, CEO of the California Earthquake Authority, and David Maurstad, FEMA Deputy Associate Administrator for Insurance and Mitigation and Senior Executive of the National Flood Insurance Program.

Update on Federal Insurance Office Activities

Director Seitz announced that FACI has a new subcommittee focused on COVID-19. The subcommittee will focus on how COVID-19 is affecting the insurance market and is open to all members of the FACI. Betsy Ward, Dan Glaser, and Gregg Crabb will serve as Co-Chairs of the Subcommittee. Director Seitz announced that Chairman Glaser will step down as the Co-Chair of the Protection Gap Subcommittee.

Director Seitz provided an update on actions that Treasury and FIO have taken in connection with COVID-19. He noted that business interruption insurance has garnered much attention, especially since COVID-19 has affected the operation of small and medium enterprises. Director Seitz stated that Treasury is monitoring the various proposals related to business interruption being discussed in Congress, state legislatures, and the private sector. In addition, several states have introduced legislative measures, some of which would appear to retroactively change the terms of insurance contracts and compel coverage of COVID-19 business interruption losses. Director Seitz stated that such proposals fundamentally conflict with the contractual nature of insurance contracts and could have troubling implications for the insurance market.

Director Seitz reported that FIO has communicated with insurers across all business lines regarding a broad range of subjects, including insurer participation in the capital markets, workers' compensation claims, and the sector response to COVID-19. Director Seitz added that FIO is monitoring market developments and volatility to understand the effect on insurer investments in commercial real estate, private debt, and alternative investments (such as collateralized loan obligations).

Director Seitz reported that Treasury is working with the National Economic Council, Congress, the states, the National Association of Insurance Commissioners (NAIC), and other stakeholders to determine a methodology to address losses attributable to the current and potential future pandemics. FIO is also coordinating on data collection with the NAIC and the states to enhance FIO's ability to counsel the Secretary on business interruption insurance. FIO is also monitoring volatility in the equity markets and assessing the impact of the low interest rate environment on carriers writing certain products such as variable annuities with certain guarantees. Director Seitz added that COVID-19 will be a key topic in FIO's annual report, which will be published by September 30, 2020. The report will also discuss InsurTech and how COVID-19 is affecting innovation in the insurance sector.

Director Seitz reported that the Advisory Committee on Risk-Sharing Mechanisms held a public meeting in May 2020 and provided an initial report to FIO including findings and recommendations related to TRIP. The recommendations to FIO included:

- Evaluate the evolving cyber market in the context of TRIP.
- Explore the coverage provided by the program for nuclear, biological, chemical, and radiological risk and its impact on the $100 billion program cap.
- Further evaluate TRIP's certification process.
- Evaluate the potential impact on the program of indexing the insurance marketplace aggregate retention amount.
- Evaluate TRIP's recoupment mechanism.
- Examine ways to limit incentives to use alternative carrier mechanisms (such as captive insurers) to shift terrorism risk to other parties
- Explore ways for FIO to facilitate terrorism risk transfer to global markets, including evaluating program administration to improve terrorism risk modeling, evaluation of risk exposure, and mitigation efforts.

Director Seitz reported that the Federal Interagency Task Force on Long-Term Care Insurance (LTCI) completed its review of proposals and policy options presented by the NAIC to Congress in April 2017, and drafted a report with its recommendations related to these proposals. This report will be published in Summer 2020. Director Seitz stated that the industry, state regulators, and the NAIC continue to face challenges in the LTCI market, including regulation of LTCI and a consistent approach for reviewing LTCI rate increases. Upon completion of the report, FIO will monitor the implementation of the report's recommendations, and continue to work with federal and state policymakers and stakeholders on long-term care.

Director Seitz reported that FIO continues to engage with the IAIS on a variety of topics, including the IAIS response to COVID-19. The IAIS issued a statement on business interruption, cautioning against initiatives seeking to retroactively require insurers to cover COVID-19-related losses which are specifically excluded in insurance contracts. Director Seitz reported that FIO supports focusing this year's global monitoring exercise and data calls on the effects of COVID-19. He noted that the current economic and pandemic crisis may provide an example of the merits of the activities-based approach. FIO has also joined a group at the IAIS that is dedicated to monitoring supervisory responses to COVID-19. FIO is also continuing its engagement with the IAIS on the insurance capital standard during the monitoring period and the ongoing work for comparability for the aggregation method being developed by the United States. Finally, the US-EU and the US-UK Covered Agreements continue to be priorities for FIO. Director Seitz confirmed that FIO will continue to advocate for appropriately tailored IAIS initiatives with strong confidential networks.

Director Seitz also stated that the U.S.-EU and U.S.-UK Covered Agreements continue to be FIO priorities, and the office is monitoring state progress in adopting laws consistent with the agreements as well as related workstreams such as the NAIC's Group Capital Calculation.

Director Seitz concluded by reminding the members of the committee that all subcommittee work is preliminary in nature and lays the groundwork for the full FACI's ultimate consideration.

Presentations from the Subcommittee on Addressing the Protection Gap Through Public-Private Partnerships and Other Mechanisms

Chairman Glaser provided an overview of the work conducted by the Protection Gap Subcommittee. The subcommittee drafted recommendations which FACI reviewed and presented to FIO. FACI recommended that FIO adopt the principles of the National Mitigation Investment Strategy and recommended that FIO adopt two additional principles:

- Provide financial and other incentives to implement mitigation measures.
- Promote innovative industry solutions and products with increased transparency.

FACI also recommended that FIO to use its convening authority to bring together industry experts to discuss the insurance protection gap. Accordingly, the Protection Gap subcommittee invited two speakers to the meeting. Chairman Glaser noted that both the California Earthquake Authority (CEA) and FEMA's Building Resilient Infrastructure and Communities (BRIC) program incorporate these recommendations into the work. Mr. Pomeroy and Mr. Maurstad also spoke to the Protection Gap Subcommittee on a subcommittee call prior to the FACI meeting. Mr. Glaser added that the subcommittee intends to consider concrete recommendations on ways that FIO can build upon and support the work of the CEA and FEMA.

Presentation by Glenn Pomeroy, California Earthquake Authority

Mr. McGovern introduced Glenn Pomeroy, Chief Executive Officer of the California Earthquake Authority (CEA). Mr. Pomeroy is also a former member of the North Dakota House of Representatives, former North Dakota Insurance Commissioner, and prior President of the NAIC. Mr. Pomeroy has been the CEO of the CEA since 2008.

Mr. McGovern said the CEA has provided insurance protection to over 1.1 million California homes and coupled this coverage with a comprehensive mitigation strategy of retrofitting older homes in high-risk areas. He added that CEA was also recently appointed administrator of the California Wildfire Fund, which provides up to $21 billion of coverage for wildfires caused by investor-owned utilities.

Mr. Pomeroy said that CEA is attempting to close the protection gap in California through both insurance and mitigation. Mr. Pomeroy gave an overview of the CEA, which was formed in response to a lack of homeowners' insurance options in California after the Northridge earthquake, when insurers left the market due to the requirement that they offer earthquake insurance on all policies. CEA was formed in 1996 and currently has over one million policyholders. CEA is publicly managed, privately financed and operates on a not-for profit basis. CEA's mitigation program has provided retrofitting grants to over 11,000 homes. Mr. Pomeroy presented a slide showing the insurers that have joined the CEA and are therefore able to participate in the California homeowners' market and offer CEA policies. He added that about 70 percent of the California homeowners' market is written by companies that are CDEA members.

CEA is newly responsible for administering the California Wildfire Fund. Although the mandate for the fund did not include mitigation, a lot of external mitigation is occurring for wildfires. The Fund was created because in California, utility companies are strictly liable for fires caused by their equipment. This strict liability caused one of California's utilities, PG&E, to file for bankruptcy. The Fund was established to provide financial resources for wildfire victims and to give stability to utility companies. The Fund is funded in equal parts by ratepayers (by an existing monthly surcharge) and California's three investor-owned utility companies. Mr. Pomeroy added that PG&E is still in bankruptcy and not yet an official member of the Fund. PG&E's participation will bring the Fund's value up to $21 billion in protection for wildfire losses.

With respect to earthquake insurance, Mr. Pomeroy reported that the market was relatively flat (growing about 6,700 policies per year) until CEA introduced new product options in 2016, which brought the average growth rate close to 60,000 a year between 2016 and 2019. Since 2016, CEA earthquake policies have grown around 60,000 policies a year, which is a ten-fold increase over the past four years compared to the previous decade. Mr. Pomeroy attributed the increase to better products, more effective outreach and greater awareness (resulting from educating Californians about the risk and the need to be insured). However, over 90 percent of California homes remain uninsured.

Mr. Pomeroy explained that California holds two-thirds of the nation's earthquake risk, and has been working on mitigation efforts and understanding vulnerabilities that different types of homes present. CEA's grant program focuses on homes with "cripple walls" which were prominent prior to World War II up to 1980. These homes have crawl spaces and sit on vertical studs, so when the ground shakes, the house will easily fall off the foundation. Mr. Pomeroy explained that fixing this problem is easily fixed by sending a contractor into the house's crawl space to install braces and bolts and wrap everything in plywood. This ties the home to the foundation and dramatically lowers the risk that the house will collapse. CEA's Brace & Bolt program began in 2014 and has provided grants to retrofit 11,000 homes. Mr. Pomeroy added that there are over one million homes in California that require this type of retrofitting, and there are also other types of houses with different vulnerabilities.

Mr. Pomeroy explained that a CEA policy is not required to receive a grant under the program, however CEA policyholders who complete the retrofit receive a 25 percent discount on their earthquake premiums. The Program therefore helps reduce risk while providing financial incentives for CEA policyholders. He added that CEA has partnered with FEMA to receive approximately $5 million a year in loss mitigation funding, which would have allowed CEA to provide grants for 4,400 homes in 2020 (noting that COVID-19 prevented this goal from being met).

Mr. Pomeroy emphasized that state-funded grants for retrofitting are considered federally taxable, although federally-funded grants are tax-exempt. CEA formed a coalition with other states providing funding to advocate for the Catastrophe Loss Mitigation Incentive and Tax Parity Act" (H.R. 5495) which would make state-funded mitigation grants non-taxable. Mr. Pomeroy noted that the legislation is bi-partisan and has co-sponsors from five states, and they are hoping to attach it to a larger piece of legislation. He added that they have received letters of support from the NAIC, NCOIL, and the U.S. Chamber of Commerce. Copies of the legislation and letters of support were provided to Committee members following the meeting. Mr. Pomeroy said that CEA is considering ways to make its grant program more narrowly-focused for low-income communities who need help the most, and emphasized that these individuals should not have to report the grant as income on the federal taxes.

Mr. Pomeroy explained that CEA does not have a government backstop, and if California passed legislation to create a small backstop, CEA would be able to reduce its spending on reinsurance. He proposed that this spending could be redirected to mitigation and accelerate CEA's efforts to further minimize the protection gap.

Ms. Bach asked what type of support CEA needed on HR 5495. Mr. Pomeroy suggested it would be beneficial for FACI to go on the record in expressing support for the bill (if possible). He added that individuals could also help by contacting their representatives and requesting that they co-sponsor the bill.

Mr. Andersen asked why the California Wildlife Fund was added to CEA's responsibilities, and whether it was due to CEA's outreach and mitigation activities. Mr. Pomeroy responded that governor and legislators were working on creating a fund, and they reached out to CEA to ask if CEA would have the ability to administer the fund, because another entity with CEA's experience did not exist in California.

Mr. Heller noted that within CEA's proposed funding tower to add funding for mitigation (a topic which had been discussed in greater depth on the subcommittee's call), the industry assessment layer goes down over time which a property/casualty policy assessment was added as a layer. He asked whether CEA has considered adding/increasing an industry assessment layer instead to shift the burden from policyholders. Mr. Pomeroy responded that CEA's capital structure (which includes capital, reinsurance, policyholder surcharges, and industry assessments) are dictated by California statute. The statute was designed for the industry assessment layer to roll off, since this is an attractive feature for insurer participation. Mr. Pomeroy suggested that a proposal to freeze or increase this roll-off would be met with overwhelming resistance from participating insurers and be difficult to accomplish through by the California Legislature. A two-thirds majority vote of the legislature would be needed because the potential assessment would be considered a tax, although Mr. Pomeroy noted that the probability of an assessment would be less than one-half of 1 percent, and would average about $1 a month for the average auto or home owner. Mr. Pomeroy added that he wants to keep this alive as a possible concept, since it is a way to provide actual support for mitigation work and start lowering risk in a proactive way.

Presentation by David Maurstad, FEMA Deputy Associate Administrator for Insurance and Mitigation and Senior Executive of the National Flood Insurance Program

Chairman Glaser introduced David Maurstad, FEMA Deputy Associate Administrator for Insurance and Mitigation and Senior Executive of the National Flood Insurance Program (NFIP). The NFIP is the largest single peril insurance operation in the world, providing more than $1.3 trillion in flood coverage to more than 5 million U.S. policyholders. Mr. Maurstad's presentation was on FEMA's Building Resilient Infrastructure and Communities Initiative (BRIC), which focuses on mitigation through public-private partnerships that reduce physical and financial risks for communities across the United States. BRIC's program principles include supporting communities through capability and capacity building, encouraging and enabling innovation, promoting partnerships and enabling large projects, and maintaining flexibility and providing consistency. Chairman Glaser added that FEMA was a member of the working group that developed the National Mitigation Investment Strategy.

Mr. Maurstad explained that FEMA has had two aspirational "moonshot" goals over the past two years: doubling the number of properties covered by flood insurance (either through the NFIP or private insurance) and increasing the investment in mitigation by a factor of four.

Mr. Maurstad described the National Mitigation Investment Strategy (Investment Strategy), a multi-federal agency effort led by FEMA to create a single national strategy for the whole community to more effectively and efficiently advance the practice of mitigation investment, increase the nation's resilience to natural hazards, and build a culture of preparedness that will reduce disaster suffering. The Investment Strategy includes three goals which frame the initial steps needed to more effectively advance the practice of mitigation investment. The first goal is to demonstrate how mitigation investments reduce risk. In doing this, the whole community builds a shared understanding of mitigation investment and values, which saves lives, protects homes, neighborhoods, ecosystems, and critical lifelines. The second goal is to coordinate mitigation investments in the pursuit of reducing risk. Shared risk information, reinforced strategies for risk reduction, easier access to funding helps the whole community justify investments and choose the most cost-effective and reasonable actions. The third goal is to standardize the practice of mitigation, where the whole community will factor mitigation into all investment decisions. This will involve partners promoting financial products that will protect investments from risk and consider mitigation standard professional practice needed to safeguard citizens, critical lifelines, services, and national safety and security. Mr. Maurstad emphasized that the Investment Strategy requires maximum participation from the whole community and consistent collaboration between the federal government and non-federal partners. He added that the Investment Strategy was intentionally written in plain language so it can be understood and used by the whole community to catalyze increased innovation and investment.

Mr. Maurstad said that implementation of the Investment Strategy will begin this year, and will involve: working to share the intent, value, and results of the investment strategy; integrating the strategy into existing policy, programs, and doctrine; reviewing proposed programs and policy for alignment; demonstrating and validating how the strategy is actionable; and measuring the success of the strategy.

Mr. Maurstad then discussed BRIC, a new source of FEMA's mitigation investment funding that will be rolled out later in 2020. BRIC is a pre-disaster mitigation grant program that will replace FEMA's previous main mitigation program, the Hazard Mitigation Grant Program (PDM, a post-disaster grant program). BRIC was created under Section 1234 of the Disaster Recovery Reform Act, which amended Section 203 of the Stafford Act to ensure an annual funding stream for pre-disaster mitigation projects. The amendment allows FEMA to set aside 6 percent of the estimated amount of disaster assistance for pre-disaster hazard mitigation projects. In 2020, this amounted to $250 million (which was allocated to the existing Hazard Mitigation Grant Program, but will be allocated to BRIC in the future).

Mr. Maurstad explained that states and territories that have had a major disaster declaration under the Stafford Act in the 7 years preceding the start of the annual application period are eligible to apply for federal assistance under BRIC. In addition, tribal governments that have had a major disaster declaration in the past 7 years, or those which are entirely or partially located in a state that has had a declaration are also eligible to apply as applicants (or as sub-applicants through the states). He noted that all states and territories received disaster declarations as a result of COVID-19, and therefore all states, territories, and tribal governments will be eligible for BRIC assistance for the next 7 years. BRIC will also promote federal cost sharing of up to 75 percent (or 90 percent for small impoverished communities).

Mr. Maurstad said that BRIC allocates funding in three ways: (1) an allocation to each eligible state and territory for mitigation capability-and capacity-building activities and mitigations projects; (2) a set-aside for tribal government applicants; and (3) competitively awarded grants for eligible applicants conducting mitigation projects. BRIC grants can be used for non-financial technical assistance, capability- and capacity-building activities, mitigation projects, and management costs.

Mr. Maurstad said that BRIC was developed through substantial engagement with the public, government officials, private, and non-profit sectors. FEMA received more than 70 letters and 5000 comments in response to this outreach. FEA is also planning additional stakeholder engagement over the summer to educate stakeholders on all aspects and details of the BRIC program and provide networking and relationship-building opportunities.

Mr. Maurstad then discussed the differences between BRIC and PDM:

- BRIC projects will be selected based on clear program priorities, including lifeline and infrastructure projects, building codes, shared responsibility and partnership, and innovative projects that reduce risk.
- BRIC will expand eligible capability- and capacity-building activities, including building code adoption and enforcement efforts and establishing partnerships.
- BRIC adds increased flexibility by reducing limitations or caps on number of applications and funds per state, and permits funding of project development costs incurred pre-award.
- BRIC will streamline the application process; and provide FEMA regional offices the authority to approve extensions based on simple, consistent checklists.

- BRIC will introduce phased projects with milestones to improve implementation outcomes.

Mr. Maurstad stated that BRIC supports broader adoption of updated building codes, which allows communities to modernize and enforce more resilient building codes. BRIC projects must comply with the latest two published consensus codes (2015 or 2018). Communities that have not updated their codes or are not enforcing their codes due to lack of resources are eligible to receive funding for building code activities (which PDM did not allow). Eligible products include support for establishing, adopting, and enforcing codes and standards.

Mr. Maurstad described the alignment between BRIC and the Investment Strategy. Recommendation 3.1 of the strategy encourages communities to adopt and enforce up-to-date building codes (which is a grant opportunity under BRIC). Recommendation 3.2 focuses on strengthening lifelines (critical infrastructure including energy, food water and shelter, medical, safety and security, communications, transportation, and hazardous materials). Mr. Maurstad said this recommendation is intended to support programs like BRIC in developing better protection and standards with respect to systems and interdependencies between systems. Mr. Maurstad concluded that both the Investment strategy and BRIC are poised to be "generational game changers" in efforts to increase mitigation investments and reduce disaster suffering at the individual and community levels.

Ms. Bach asked whether BRIC covers all hazards and whether the grants are community or individual grants. Mr. Maurstad confirmed that the program covers all hazards and added that FEMA's Flood Mitigation Assistance Grant Program is the agency's only hazard-specific program. BRIC only provides community grants, however communities can provide assistance to individuals (e.g., a neighborhood sponsoring a neighborhood buyout program).

Ms. Bach asked relationships between FEMA and state agencies. Mr. Maurstad responded states are the applicants under BRIC, and can apply on behalf of state hazard mitigation programs or projects at a community/regional level. He added that CEA's use of FEMA mitigation grant funds is in line with how FEMA would like to move forward with BRIC, and FEMA further hopes to expand efforts at the community level for local govern, non-profits, and the private sector to work together and combine resources to buy down risk.. FEMA is also hopeful that BRIC will encourage larger grant programs and infrastructure mitigation activities through partnership.

Ms. Bach asked whether private insurers are required to provide a policyholder reward, credit, or preferred risk category for completion of a mitigation project, or if this effort is within the FEMA workstream. Mr. Maurstad responded that the NFIP is doing work to encourage property holders to mitigate risk and positively impact their insurance rates.

Mr. Heller asked if FEMA has policy preferences for pre-disaster projects, i.e., best practices for how a project would be accomplished (e.g., use of a managed retreat or levies in a sea rise zone) or if the agency is open to options chosen at the state or local level. Mr. Maurstad responded that FEMA is developing new best practices to provide guidance on successful past projects, and if the project is applicable to the local mitigation plan, FEMA will be able to provide information to consider as a project, understand ways in which the project was successful, understand the partnerships, and learn what types of innovation were leveraged. He added that FEMA has broad categories of priorities, however projects that will buy down risk in the long term and are cost effective will be considered.

Mr. Heller asked if FEMA has a preference for projects involving conceptual planning versus design or build phases. Mr. Maurstad stated that the BRIC notice of funding opportunity was written at a high-level to allow FEMA the ability to adapt without having to go through a regulatory process. He added that FEMA will learn from the first years of the program, and will continue to improve the program to meet the needs of communities and spur an actual movement to obtain whole community buy-in. Mr. Maurstad concluded by emphasizing that there needs to be a commitment to take steps now to reduce impacts and disaster suffering in the future.

COVID-19 Subcommittee Discussion

Chairman Glaser reiterated that the purpose of the COVID-19 subcommittee is to focus on how the insurance industry can play a role in creating a society that is better educated, protected, and prepared for managing future pandemics. The subcommittee will gather best practices from the FACI membership and provide FIO with concrete advice and recommendations on the role of the insurance industry in better managing future pandemic risk. Chairman Glaser reminded members that they received an email the previous week from Ms. Ward outlining proposed subcommittee workstreams. He said that in response, the subcommittee's co-chairs received feedback suggesting the work be streamlined and the number of workstreams reduced. Accordingly, the subcommittee will create working groups that will focus on specific issues and report to the broader subcommittee. In turn, the subcommittee will decide whether an issue should be brought to the full FACI.

Ms. Ward added that a number of regulators and supervisors have adopted measures to provide flexibility to insurers to maintain safety and soundness and deliver essential services. She added that a number of companies have adopted measures to support the fair treatment of customers, including clear disclosure and efficient claims processing in light of COVID-19. Ms. Ward s orders issued by governors and other authorities helped professionals maintain income during the crisis while expanding access to care and critical services. However, she added that these orders created some confusion, as businesses and individuals attempted to comply with regulations, and the patchwork resulted in uneven distribution of aid and potentially created winners and losers.

Ms. Ward said the COVID-19 subcommittee will seek to use its risk management experience to provide FIO with clear advice on what society can do to better prepare for future pandemics and operate more effectively (e.g., how the industry might work more fluidly with state and federal regulators to address COVID-related concerns). The subcommittee will have two workstreams to address and advise on potential insurance solutions to improve the country's protection and preparedness for future pandemic-like events. Ms. Ward announced that the first workstream would be co-chaired by Chairman Glaser and Mr. Crabb, and it will consider if there should be a federal program and/or a public-private partnership tailored to help businesses to meet the financial challenges from future pandemics. Ms. Ward stated that she will chair the second workstream, which will consider the problems that have surfaced in the COVID-19 pandemic and how the insurance industry can help address them. The second workstream will also review changes made to facilitate the delivery of essential insurance services that may make sense for ongoing efficiency and preparedness for future disruptions. The second workstream will also consider what needs to be done to better prepare for a future pandemic (e.g., digital engagement), what innovations should be considered to address ongoing issues and prepare for the next pandemic-like event, and what additional products and protections could be offered by the industry to better serve the country in future pandemics.

Chairman Glaser named the members of each workstream.

> Workstream 1: Greg Crabb, Dan Glaser, Eric Andersen, Birny Birnbaum, Jim Kelleher, Sean McGovern, Kent Sullivan and Mark Thresher.

> Workstream 2: Betsy Ward, Amy Bach, Jillian Froment, Rob Falzon, George Keiser, Peter Kochenburger, Doug Heller and Quincy Branch.

Chairman Glaser commented that the workstreams will likely have one meeting per month.

Chairman Glaser opened the floor for member discussion.

Mr. Thresher voiced his concern that he does not want the subcommittee to begin its work with a negative assumption that the insurance industry was inefficient and/or ineffective in responding to COVID-19. Ms. Bach expressed the opinion that she did not take away that messaging from the description of the workstreams but agreed that the subcommittee should avoid qualitative statements and judgements. She stated that the NAIC and state data call was one of the most important tasks required for each of the workstreams to make informed recommendations, because this would allow discussion based on facts and gathered data rather than overgeneralizations about the industry response. Mr. Thresher clarified that understanding the current impact is important, but also noted that preparing for the future is necessary because insurance companies will want to be paid for any new risks they are assuming in the future.

Member Heller suggested that the subcommittee's activities should not be entirely forward-looking. He expressed interest in understanding how underserved communities have been treated during COVID-19 and whether that treatment has been different than other communities during COVID-19. He noted that FIO has a statutory responsibility to investigate and understand how underserved communities are affected by activities in the insurance sector, and expressed that this period should be examined to learn whether there were issues that should be addressed in future pandemics. Mr. Crabb agreed with Mr. Heller suggestion to determine how economic aid can be better directed to the right groups in the future. He added that risk management, and potentially insurance, are relevant components to determine a better way to allocate resources.

Mr. Crabb suggested that the subcommittee assess the magnitude of COVID-19's financial impact on society, because understanding the cost will influence solutions. Chairman Glaser agreed but suggested this may be difficult given the ongoing financial impact to society; and added it could be many months or several years until the actual impact is known. Mr. Crabb responded that it might be possible for the subcommittee to perform high-level math about the amount of government aid that has gone to businesses as a possible initial methodology to determining a financial impact.

Mr. Keiser recommended that the subcommittee's examination of fiscal impact should focus as much as possible on the impact to the insurance industry, specifically the shift in investments based on the yield available in the bond market. Mr. Keiser further recommended examining the risk exposure to the insurance industry's reserves. Chairman Glaser agreed but also suggested avoiding evaluating the portfolios of insurers and shifts over time, which is a regulatory responsibility.

Member Birnbaum recommended that the subcommittee should also examine the impact of COVID-19 on insurance consumers/policyholders. He stated that although some lines of business have experienced significant (or even catastrophic) losses, other lines have had risk exposure has decrease significantly. He stated that in the absence of regulatory action, this could result in windfall profits for insurers. Mr. Birnbaum added that data collection is a key issue, because although business interruption insurance has been discussed some, there has not been discussion about data collection for other lines of business, such as personal and commercial auto and business owner insurance. Mr. Birnbaum concluded that this data is very important in making informed judgments. Chairman Glaser questioned whether FACI has the authority to obtain this data from multiple companies and data sources, and asked Mr. Birnbaum for suggestions on obtaining this data. Mr. Birnbaum responded that FIO has the authority to collect data if state regulators are not doing so, and FIO has also demonstrated an ability to cooperate with state insurance regulators to get the necessary data. He added that FIO has an ongoing mandate to monitor the availability of insurance underserved communities. Mr. Birnbaum added that he does not believe state regulators have the tools and data available to monitor the aftermath of the pandemic, and FIO can therefore contribute based on its mandate to monitor underserved communities and modernize insurance regulation. Chairman Glaser agreed with the emphasis of looking at the impact on policyholders as well as the impact on the insurance industry.

Chairman Glaser suggested that the subcommittee's significant focus should be forward-looking, and he expressed the opinion that the insurance industry will not be able to provide broad-scale pandemic insurance, noting that the global industry has $800 billion in policyholder surplus however the potential for business interruption losses is trillions of dollars. As a result, Chairman Glaser suggested that a public-private partnership is important for the next pandemic, which will lead to a more resilient society and ensure policyholders and affected parties receive money faster. Chairman Glaser suggested that the subcommittee could bring in experts to explain why the risk is not broadly insurable and hopefully obtain broad agreement on this statement from the subcommittee. He suggested that the subcommittee could also bring in experts that would be able to evaluate the potential options for public-private partnerships that might be useful in the United States for the next pandemic.

Chairman Glaser suggested that a large part of the first workstream's focus could be evaluating the different approaches to a public-private partnership and make recommendations on how to best solve for the next pandemic.

Mr. Kelleher responded that many believe that pandemics are completely uninsurable, so there needs to be a broad perspective taken. He noted that while there might need to be a government program that is serviced by the industry, it is important to take a broad view in discussing the future possible solutions.

Mr. Crabb said that based on member feedback, the subcommittee needs to determine the scope of its work, noting that different suggestions for areas of focus were offered and each would be its own independent task.

Mr. Birnbaum expressed support for Workstream 1. In response to Mr. Kelleher's comment on uninsurability, he expressed the opinion that it is uninsurable because business interruption occurs as a result of government decisions, and it is not possible to predict government action. Ms. Bach added that the civil authority language in almost every business interruption policy is limited to four weeks/30 days, which creates a starting point of what is "essential coverage" that the industry can manage.

Mr. McGovern suggested that the individual workstreams will need to do more work to define scope. With respect to Workstream 1, he noted there is a lot of ongoing work that the workstream can pick up and help FIO navigate in its role of advising FIO. He suggested that expressed concern around the lack of definition of Work Stream Number 2.

Chairman Glaser noted that Ms. Baldwin will reach out to the subcommittee's members to schedule calls for each workstream.

Update from Subcommittee on FIO's International Work

Mr. Falzon noted that the International Subcommittee decided earlier in 2020 to focus on access to markets and ensuring a fair, level playing field. The subcommittee also decided to continue monitoring developments at the IAIS. The subcommittee intends to create valuable resources that can be used in trade negotiation and representing the U.S. insurance industry. Mr. Falzon reported that the subcommittee has identified nine areas it considers to the most important issues facing the industry. These issues are:

1. Restrictions on Foreign Direct Investment (FDI) and Forms of Establishment
2. Restrictions on Management Control / Key Foreign Personnel / Other Corporate Governance Requirements
3. Cross Border Reinsurance Restrictions
4. Data/IT Localization and Digital Protectionism
5. Discriminatory Screening and Approval Mechanisms, and Other Regulatory Trade Barriers
6. Non-Regulatory Barriers
7. Anti-Competitive Advantages of State-Owned Insurers and Reinsurers

8. Capital Outflow Restrictions
9. Implementation, Enforcement and Contract Sanctity

Mr. Falzon reported that the subcommittee intends to produce three deliverables: (1) a narrative around the nine issues to explain the issues more fully; (2) an annex containing a matrix of the issues and the status of compliance with these issues in countries where the U.S. insurance industry has the most engagement, and (3) a series of recommendations/guidance to FACI that can be used in trade negotiation, implementation, and achieving further progress across the nine issues in different markets. The subcommittee has created a working group that holds interim meetings to make progress on these tasks, and the full subcommittee will hold meetings on a monthly basis through December, when the subcommittee will provide FACI with a more complete report. Mr. Falzon also noted that APCIA and ACLI have assisted by providing resources to the subcommittee.

Mr. Falzon stated that the Subcommittee discussed the impact of COVID on the IAIS related to the first year of the ICS monitoring period. Members expressed some concern about conducting data collection and whether appropriate modification has been made to capture balance sheets as of the end of March 2020 and capture the market stress associated with the COVID-19 crisis. He added that although the IAIS has adjusted dates to provide some relief, the supervisory colleges will meet before data becomes available, and regulators will not be able to get together to look at the data due to social distancing restrictions. Mr. Falzon suggested that this data is probably going to be among the most important to be gathered during the monitoring period. Mr. Falzon requested that FACI ask Treasury to inquire as to how the IAIS will modify the process for the monitoring period in order to be able to study, share, and react to the data that is being collected this year. Mr. Falzon also suggested extending the monitoring period as an alternative.

Mr. Birnbaum expressed support for the subcommittee's workplan and Mr. Falzon's recommendation regarding IAIS data collection.

Mr. Falzon noted that due to the departure of Tom Leonardi from the FACI, the International Subcommittee has an opening for a Co-Chair if any members are interested.

Update from the Subcommittee on the Availability of Insurance Products

Mr. Birnbaum and Mr. Keiser, co-chairs of the subcommittee, provided an update on the subcommittee's activities.

Mr. Birnbaum read statements by Kirt Walker, Chief Executive Officer of Nationwide, and Jack Salzwedel, CEO of American Family Insurance, and Supreme Court Justice Anthony Kennedy regarding the death of George Floyd, inherent bias, systemic racism, and disparate impact. Mr. Birnbaum urged explicit recognition of disparate impact/proxy discrimination as unfair discrimination as an action needed by the insurance industry. Mr. Birnbaum also emphasized the importance of supporting efforts to identify and minimize disparate impact or unintentional proxy discrimination.

Mr. Birnbaum reported that the subcommittee considered two draft recommendations:

- FACI recommends that FIO support disparate impact as unfair discrimination against protected classes in residential property insurance under the Fair Housing Act, as currently recognized by the Department of Housing and Urban Development, and oppose the proposed revisions to HUD's disparate impact rule.

- FACI recommends that FIO encourage states to modernize insurance regulation by explicit recognition of disparate impact as unfair discrimination against protected classes and further encourage states to develop statutory or regulatory guidance for insurers to identify and minimize disparate impact against protected classes, and for safe harbors for insurers to demonstrate compliance.

Mr. Birnbaum stated that proponents of the recommendations provided examples about how disparate impact analysis complaints have led to more accurate cost-based pricing and greater economic development opportunities in communities that have historically been underserved and whose economic development was hindered by historical unfair discrimination. Mr. Birnbaum also expressed the opinion that APCIA did not provide examples of how efforts to minimize disparate impact has forced insurers to depart from cost-based pricing. Mr. Birnbaum stated that proponents of the recommendations also noted an increase in potential for proxy discrimination against minority communities by virtue of algorithms based on third-party data.

Mr. Birnbaum suggested that insurers and regulators would want to know if vendors have taken steps to identify and minimize proxy discrimination against minority communities, but he alleged that the proposed HUD rule would prohibit such an inquiry and would also effectively eliminate disparate impact claims. Mr. Birnbaum stated his opinion that there is an urgent need to modernize state insurance regulations to address these issues.

Mr. Birnbaum reported that the subcommittee voted against adopting the two proposed recommendations by a margin of 6-4. He requested that the topic be discussed by the full FACI.

Mr. Keiser stated that his concern about the recommendations was that the proposed language was too general and needed to be slightly refined/further developed. He expressed his opinion that there is not disagreement that disparate impact occurs and should be correct, nor a vote in favor of the HUD position on disparate impact, but rather a desire to better understand the recommendation and ensure that the language recommended would not create a more difficult situation. that he believed that the language proposed in the recommendations was too general and needed refinement. Mr. Keiser said it was important to ensure the language was not limiting industry’s ability to generate underwriting algorithms that are creative and valid, and suggested that a company could attempt a unique algorithm that would be judged as disparate (despite having a valid underwriting basis) because there would be a differential impact on any group (not just minorities). Mr. Keiser expressed his belief that the topic is important enough that the full FACI should be fully informed on the issue and therefore have a comfort level with its vote.

Mr. Thresher commented that Nationwide believes strongly in this issue and its treatment of people across the country. He agreed with Mr. Keiser's comment that the language could be narrowed to a point where it would be able to obtain the whole subcommittee's support.

Mr. Birnbaum asked Chairman Glaser for guidance on whether FACI should hold an extended discussion on the topic at the meeting. He added that he believes the issue is time sensitive because the HUD rule is in the process of being finalized, and FACI will need to take action if FIO is going to provide input. Mr. Birnbaum also concurred with Mr. Keiser that several subcommittee members opposed the recommendation on the basis of the language being too broad, but added he has not received specific proposals to modify the language.

Chairman Glaser commented that this is a complex topic where people started with different views, and suggested that a process of iteration could be helpful. He added that an extended discussion would not be possible because there was insufficient time remaining in to educate the full Committee. Chairman Glaser also reviewed the established process for FACI to consider issues. He stated that subcommittees are responsible for performing groundwork and having detailed debates to develop a consensus on what the entire FACI should consider. At that point, FACI will consider the report from the subcommittee and determine whether or not a recommendation should be made to FIO. Chairman Glaser suggested that the subcommittee, if so inclined, should revisit the matter to determine if compromises and iterations can be reached that will result in a majority of the subcommittee's support. He added that if the subcommittee can reach a majority position on language or a recommendation, the full Committee could pre-read the recommendation and potentially convene an additional meeting to vote on a recommendation to FIO.

Chairman Glaser added that FACI also requested that the subcommittee focus on LTCI, and the subcommittee will be able to review the federal interagency report which will soon be released, and can present on this matter at the September meeting.

Mr. Heller stated that he expressed support for the proposed recommendations, but proposed that the FACI may want to consider whether there is a threshold agreement that the subcommittee should be examining challenging practices that lead to disparate impact, as this might help narrow the scope of the subcommittee's discussion. Chairman Glaser responded that insufficient time remained in the meeting to hold an informed threshold vote. Mr. Kelleher agreed, based on his review of the subcommittee's background materials, that the material is complex and will take additional time to review and formulate an opinion.

Mr. Birnbaum provided clarification regarding the topic of disparate impact as regarding whether state insurance regulators and the industry have an obligation to take steps to avoid unintentional discrimination against protected classes, in addition to intentional discrimination (which is already fully-supported and a requirement). Mr. Birnbaum expressed agreement with Mr. Heller's statement that a threshold determination is required. Chairman Glaser reiterated that this should be discussed at the subcommittee level, and under FACI's governance structure would need subcommittee support to be reviewed by the full Committee.

Mr. Kochenburger expressed support for reviewing the matter at the subcommittee level to work on developing consensus language.

New Business and Closing Remarks

Chairman Glaser expressed his appreciation for everyone's efforts on each of the subcommittees, and emphasized that in addition to benefitting FIO, these discussions are beneficial in informing each member on complex topics relevant to their day-to-day work.

Chairman Glaser announced that the next FACI meeting is scheduled for September 29, 2020, and the Availability Subcommittee would be provided the majority of time in the meeting to present its work. A determination will be made in approximately one month regarding whether the meeting will be held in-person or via teleconference. The International Subcommittee will be provided the opportunity to lead the year's final meeting on December 3, 2020. At each of these meetings, the other subcommittees will also provide brief updates, similar to the format used in this meeting.

No new business was presented.

The meeting concluded by Chairman Glaser at 4:04 p.m.

I hereby certify these minutes of the June 4, 2020 Federal Advisory Committee on Insurance public meeting are true and correct to the best of my knowledge.

Dan Glaser
Chair