

Suggested Work Streams for FACI Availability Subcommittee for 2021

Prepared by Birny Birnbaum, February 3, 2021

To facilitate our discussion of 2021 Availability Subcommittee activities, I prepared some suggestions for the subcommittee's consideration for our call on February 8, 2021

1. Continue Review of a Disparate Impact Methodology and Standard for Unfair Discrimination in Insurance

In one of President Biden's Executive Orders, he directed the Secretary of the Department of Housing and Urban Development to

“ take all steps necessary to examine the effects of the September 24, 2020, rule entitled “HUD's Implementation of the Fair Housing Act's Disparate Impact Standard” (codified at part 100 of title 24, Code of Federal Regulations), including the effect that amending the February 15, 2013, rule entitled “Implementation of the Fair Housing Act's Discriminatory Effects Standard” has had on HUD's statutory duty to ensure compliance with the Fair Housing Act. Based on that examination, the Secretary shall take any necessary steps, as appropriate and consistent with applicable law, to implement the Fair Housing Act's requirements that HUD administer its programs in a manner that affirmatively furthers fair housing and HUD's overall duty to administer the Act (42 U.S.C. 3608(a)) including by preventing practices with an unjustified discriminatory effect.”

HUD's recent rule changing the disparate impact framework under the FHA has been challenged and enjoined from implementation pending an appeal.

In the 2017 Report, “A Financial System That Creates Economic Opportunities: Asset Management and Insurance,” the Department of Treasury wrote:

Treasury recommends that HUD reconsider its use of the disparate impact rule. In particular, HUD should consider whether the disparate impact rule, as applied, is consistent with McCarran-Ferguson and existing state law. HUD should also reconsider whether such a rule would have a disruptive effect on the availability of homeowners insurance and whether the rule is reconcilable with actuarially sound principles.

This work stream could assist FACI in making recommendations to FIO for Treasury's input in HUD's review of the disparate impact rule and would continue the subcommittee's work on examining systemic racism in insurance.

2. Develop recommendations for updating FIO’s analysis of availability and affordability in personal auto insurance and for examining availability and affordability of other lines of insurance.

FIO issued a report on personal auto insurance availability and affordability in 2016, but has not updated the study or methodology. Nor has FIO produced any studies of availability and affordability of other lines of insurance set out for FIO in the Dodd Frank Act.

This work stream could assist FOCI in making recommendations regarding FIO studies of availability and affordability in traditionally-underserved areas. The work stream might consider which lines of business to examine or particular aspects of availability and affordability to examine within a particular line of business and suggest the relevant data and methodologies for such examination, including, for example, improvements in the FIO auto insurance availability methodology.

3. Continue to monitor the Long Term Care Insurance Market with particular emphasis on the activities underway at the NAIC.

The subcommittee completed one aspect of our work on LTCI last year by making recommendations to FIO in response to the federal interagency report on LTCI. However, the NAIC is engaged in potentially dramatic changes in the regulatory oversight of LTCI and LTCI insurers. As LTCI has been of interest to a variety of federal agencies, this work stream would continue to monitor the NAIC’s activities and make recommendations, if needed, to FOCI for FIO activities.

4. Consider Reforms to the National Flood Insurance Program to promote greater availability and affordability of flood insurance.

Widespread availability of affordable flood insurance has been and will be an important component of building greater risk management and resilience in the face of climate change impacts on flooding. In recent years, there have been major advances in modeling of flood risk – meaning vastly improved ability of private insurers to assess and price flood risk – and greater appetite of private insurers and reinsurers to take on flood risk.

This work stream would examine potential reforms to the NFIP and other, related federal programs to improve the availability and affordability of flood insurance.