FACI – December 3, 2020
COVID-19 Pandemic – Preparedness Subcommittee Meeting

I. Emerging Lessons

As the COVID-19 pandemic continues, the Subcommittee has reviewed a wide variety of actions both federal and state regulators have taken to better serve consumers in these challenging circumstances. Overall, there are a host of specific examples that policymakers should consider in any future situations where moving to a more contactless method of conducting business becomes immediately necessary.

At the federal level, the Department of Labor (DOL), the Securities and Exchange Commission (SEC), and the Department of Homeland Security (DHS) took actions to address COVID-19 related challenges. The DOL and the SEC made significant modifications that any policymaker should consider in the future and the DHS developed a list of critical essential business services that should be allowed to operate during a pandemic to help provide consistency to state emergency considerations. The National Association of Insurance Commissioners (NAIC) helped to coordinate the state insurance response and relief efforts, including educational resources, uniform data collection, and other regulatory relief items. Of course, the COVID-19 pandemic continues and Congress, federal agencies, the NAIC, and state insurance regulators and lawmakers may need to address new challenges.

U.S. Department of Labor

In conjunction with the President's Coronavirus (COVID) emergency declaration on March 13, 2020, the DOL recognized that the COVID-19 outbreak may impede certain requirements and deadlines established under the Employee Retirement Income Security Act of 1974 (ERISA). In April, the DOL coordinated with the Department of Treasury and the Department of Health and Human Services to extend the time for plan officials to furnish benefit statements, annual funding notices, and other notices, so long as a good faith effort was made to furnish the documents as administratively practicable. This flexibility was provided for 60 days and allowed participants and beneficiaries additional time to make important health coverage decisions, among other matters.

At the end of May, DOL provided additional help to ERISA plan participants by finalizing a rule on the use of electronic delivery ("e-delivery") for certain documents. The rule took effect on July 27, 2020. Retirement plan administrators can now electronically notify participants and beneficiaries that certain disclosures are available on a specified website. In addition, retirement plan administrators can more easily directly deliver disclosures by email.

U.S. Securities and Exchange Commission

In light of the COVID pandemic, the SEC issued a statement in March allowing flexibility on manual signatures for filing certain forms under 302(b). The SEC also provided guidance for conducting shareholder meetings during COVID-19, and allowed electronic proxy deliveries to complement mailing requirements. Furthermore, the SEC allowed for additional flexibility for online filings and notarizations.

U.S. Department of Homeland Security

Due in part to the growing number of states issuing "stay at home" orders and limiting certain business operations in the spring, DHS's Cybersecurity and Infrastructure Security Agency issued guidance in April on what businesses should be considered critical infrastructure and be allowed to operate during the pandemic. This document included insurance as a part of the critical U.S. financial services infrastructure workforce deemed "essential services."

National Association of Insurance Commissioners

At the state level, the NAIC took actions to organize and address COVID-19 related challenges focusing on three critical areas: protecting insurance consumers, ensuring stability in the insurance market, and delivering exceptional service. Consumer protection included educational resources about the impact of the pandemic on insurance lines, mitigating the impact of COVID-19, and warnings consumers about potential fraud risks. Coordinated data collection on business interruption insurance facilitated as well as surveys on the pandemic's impacts, adjusting regulations to reflect challenges, and coordinating with federal and international regulators on the global response to pandemic impacts made for efficiency and expediency. Several actions, such as adjusting NAIC software to streamline process and enable remote business operations and virtual platforms, better enabled regulators and the industry to collaborate and coordinate during the crisis while ensuring continued insurance operations and customer engagement during the pandemic.

Education and Resources

The NAIC established a Coronavirus Resource Center and outreach program to support the public, business community and insurance professionals understand and manage the risks of the current outbreak of COVID-19. This website has access to third-party information and resources as well as information specifically created by the NAIC such as thousands of related state bulletins and alerts, insurance policy coverage and other resources for consumers as well as for the industry. Information related to coverages and exclusions, and alerts to protect consumers and ensure market solvency were included.

Data Collection

In response to state regulator desires for timely information and data on the pandemic's impact on the insurance industry, the NAIC, in conjunction with regulators and industry, created a uniform data collection survey for state regulators to utilize. The data collection survey was intended to minimize individual state collections and potential administrative burdens on insurers, while providing meaningful data and insight to regulators. It has been largely successful and should serve as a future model for data collection during a pandemic or similar emergency.

Accounting and Reporting Guidance

The NAIC also resolved reporting questions for the treatment of overdue mortgages and extended the due dates of quarterly filings to provide some relief and guidance for insurers and, by extension, business owners. By allowing more time for the insurers to collect premiums before reporting the payments as late, these premium receivables weren't treated as non-admitted assets in statutory financial statements.

The NAIC also addressed accounting issues related to auto insurer's refunds, rate reductions, and policy dividends to consumers based on less driving due to shutdowns. The default methodology would be to record it as a reduction in premium and the guidance also offered flexibility for insurers that prefer to report through expenses in a one-time exception.

Notably, an NAIC committee began working on the Standard Nonforfeiture Law for Individual Deferred Annuities to drop the standard minimum nonforfeiture interest rate for individual deferred annuities from 1% to 0%, given the decreases in interest rates made in response to COVID-19.

These responses all better enabled regulators and the industry to operate and weather the pandemic's impacts while serving consumers.

Recommendation

As the pandemic continues, it is clear that DOL, SEC, DHS and NAIC/state regulatory relief actions were helpful given the circumstances. This pandemic has and continues to present unprecedented and unique challenges to both consumers and the insurance industry that serves them. Essential business, for the first time, needed to operate almost completely remotely. Any physical contact between consumers and firms that typically provide them with everything from health coverage to investment advice became high risk and in many cases would have violated stay-at-home orders across the country.

The Subcommittee recommends that FIO should reiterate the importance of insurance being deemed a business essential service and encourage federal and state regulators to allow for regulatory compliance efficiencies, coordinate, or take similar relief actions during a future pandemic or emergency, while ensuring consumers and investors continue to have timely access to critical services and information.

Therefore, as the pandemic continues, it is clear that the aforementioned SEC and DOL actions were helpful given the circumstances. However, as we continue to confront the challenges of this pandemic and develop better ways to prepare for future crises and pandemics, both industry and regulators will need to plan to confront these challenges as part of resiliency planning for uninterrupted regulatory oversight and approvals as well as ongoing business operations. These plans and preparations should include solutions so industry and regulators can operate as normally as possible, with the understanding that future crises may also have unique qualities that will still require regulatory relief and unanticipated solutions.

II. Ensuring Resiliency in the Event of a Pandemic

When regulators and companies faced the sudden and wide-ranging impacts of the pandemic, significant and long-lasting adaptations were needed to ensure uninterrupted regulatory oversight and approvals as well as ongoing business operations. Some of these were operational, such as creating safe and efficient ways for staff to conduct work in-person or remotely and dealing with increased absenteeism. Other challenges related to resource allocation in order to deal with both the change in operational capacity and new priorities, such as regulators needing to direct more resources toward health insurance coverage issues or companies responding to an influx of requests for extending payment grace periods and other individual policy changes. While many regulators and companies adapted well, most would agree that there were elements of the pandemic for which they had not planned and decisions that had to be made in the moment without reference to a previously developed strategy.

The Subcommittee recommends that FIO encourage regulatory agencies and insurers that have not already done so, either voluntarily or for purposes of satisfying regulatory requirements (e.g., ORSA), to develop strategies that address the key organizational challenges a pandemic poses in preparation for a future event. This may be done either as part of a broader business continuity plan, disaster plan, or a unique pandemic plan. Such a plan should:

- Identify programs that can be undertaken in advance of a pandemic that would diminish its impact on the organization and allow for the continuation of essential services;
- Present strategies for responding to operational challenges created by a pandemic, including a need for remote working, identification of essential staff, and redeployment of staff to key functions, among others;
- Determine critical interdependencies with external entities and steps to support them during a pandemic; and
- Provide guidance for prioritizing the allocation of resources in the event that a pandemic diminishes an organization's capacity for an extended time period or place new demands on the organization that compete with other priorities or obligations it has in

normal times, while maintaining essential services.

III. Premium Grace Period Principles

In response to COVID-19, a number of states issued bulletins directing insurers to provide their policyholders who may be experiencing a financial hardship due to COVID with grace period relief to pay insurance premiums. In response to initial state activity, which lacked a consistent and coordinated approach for grace period relief, the American Council of Life Insurance (ACLI), in conjunction with regulator feedback, developed a set of principles. These principles were designed to help offer states guidance on grace period relief and repayment that would ultimately promote a more consistent approach across states.

Recommendation

If there is a state of emergency declared, the Subcommittee recommends that FIO should support applying the following principles for insurance premium relief as originated by the American Council of Life Insurance:

1. Allowing premium payments up to a total of 90 days from the premium due date so that the policy is not canceled or lapsed;

2. Allowing reasonable repayment options for unpaid premiums;

3. Waiving any late premium payment fees or penalties;

4. Providing reasonable flexibility to policyholders or their beneficiaries regarding proof of claim; and

5. Providing policyholders the ability to make premium payments, report a claim or otherwise communicate with the policyholders' insurer or producer electronically, or if in person, by maintaining safe social distancing standards

IV. Temporary Regulatory Relief that Should Be Made Permanent

As noted above, the FACI COVID-19 subcommittee considered temporary actions taken that ease commerce in a touchless environment, that may benefit society if made permanent. Specifically, some proposed recommendations to FIO include e-delivery, e-signature, e-filing, and producer licensing.

E-Delivery

Recommendation

The COVID Subcommittee – Preparedness Workstream 2 supports the expanded use of e-delivery and has reviewed potential barriers to its adoption. The group found there are myriad complex state and federal statutory issues—for example, affirmative consent and reasonable demonstration as required by the Federal E-Sign Act and the States' Uniform Electronic Transactions Act (UETA)—that limit the use of e-delivery, in turn restricting consumer access to a more consumer friendly digital experience. Although there are several research efforts underway looking at digital transformation for the financial services industry, none are presently focused on the challenges facing the industry sector in relation to e-delivery. We believe it is appropriate for FIO to engage various stakeholders to conduct a study on the matter and develop specific recommendations that identify areas of potential regulatory concern governing e-delivery. Such a study would be a natural extension to FIO's ongoing monitoring and reporting on InsurTech issues, including e-delivery (See 2019 and 2020 FIO Annual Reports to Congress). FIO should conduct a study of Federal and State regulations relating to the use of e-delivery in the insurance sector. The study should identify and explore existing regulatory barriers limiting insurers' and customers' ability to utilize the advantages of technological developments through the use of e-delivery, thereby enabling conduct of business in the manner consistent with today's consumer expectations. The study should summarize statutory and federal regulatory requirements relating to e-delivery for insurance products, identify ways to improve existing laws and regulations, including areas for increased regulatory flexibility and opportunities to harmonize any inconsistent laws and regulations.

The FIO should solicit input from regulators, insurers, consumers, and other stakeholders as part of this study.

E-Signature

The COVID Subcommittee – Preparedness Workstream 2 would like to recommend that FIO encourage regulators take actions to expand the use of e-signature for insurance transactions and regulatory filings, in line with the American Council of Life Insurers (ACLI) "temp to perm" COVID-19 recommendations. We believe that regulators will need to update any references to "hard signatures" in regulatory guidance and policies as part of this effort.

Recommendation

FIO should encourage both Federal and state regulators to permit or, to the extent e-signature is already adopted, enhance the use of e-signature for insurance transactions and regulatory filings where appropriate and applicable. Regulators should be encouraged to review relevant insurance guidance and rules that require a signature to expressly allow that requirement to be satisfied by an e-signature.

E-Filing

The COVID Subcommittee – Preparedness Workstream 2 would like to recommend that FIO encourage regulators to adopt e-filing protocols for insurance regulatory filings, in line with ACLI's own "temp to perm" COVID-19 recommendations. We are recommending that FIO encourage states to transition to e-filing where feasible. It's recognized that resource constraints or potential statutory barriers may preclude or hinder adoption of certain e-filing uses.

Recommendation

FIO should encourage state regulators that have not already done so to transition to electronic insurance company regulatory filings where appropriate and applicable.

Producer Licensing

The COVID Subcommittee- Preparedness Workstream 2 would like to recommend that FIO encourage state regulators to transition to online/remote exams and training for producer licensing. As noted in Subcommittee discussions, several states are currently working to move training and examinations online, but it will take some time as there are a limited number of vendors available to do this work. Also, the NAIC has worked with state regulators to increase the number of states offering remote proctored exams from one in March 2020 to 21 as of September 2020. Additional states are exploring the possibility of remote exams in the 4th quarter of 2020.

Recommendation

FIO should encourage state regulators that have not already done so to adopt online/remote training and examination options for producer licensing where possible.