

**Comments of the Center for Economic Justice to the
NAIC International Relations (G) Committee regarding
Proposed NAIC Comments on Revised IAIS ICPS 1, 2, 18 and 19**

August 24, 2017

First, we apologize for not submitting these comments in writing earlier. These comments explain our oral comments delivered during today's conference call.

Proposed ICP 1.2 states:

Primary legislation clearly defines the objectives of insurance supervision and the principal objectives are, at least, to:

- protect policyholders;
- promote the maintenance of a fair, safe and stable insurance market; and
- contribute to financial stability.

The NAIC comments propose replacing “defines” to “reflects.” This reverses the direction of guidance from the legislature to the executive/administrative (with “defines”) to insurance supervision guiding legislation (with “reflects”). Legislation should define the objectives of insurance supervision to express the will of the legislature which is an extension of the will of the citizens.

Each of the three principal objectives can be interpreted narrowly or broadly. For example, one might interpret promoting a fair, safe and stable insurance market to encompass contributing to financial stability. Or one might interpret promoting a fair, safe and stable insurance market as being limited to insurance markets only. We support the inclusion of the third principle because it clearly articulates the macroprudential role of insurance supervisors – a role not clearly articulated with the first two bullets. Consequently, we oppose the NAIC proposal to delete this third bullet.

The NAIC comments on ICP 1.4 urges a change in 1.4.2 and 1.4.3 from “should initiate or propose” to “may initiate or propose” with the comment that initiating or proposing changes in legislation may not be the only or best way for the supervisor to address such shortcomings. Yet, the ICP itself states:

The supervisor initiates or proposes changes in legislation where current responsibilities, objectives or powers are not sufficient to meet the intended supervisory outcomes. It is unclear what other methods the NAIC is referring to when a supervisor determines that current responsibilities, objectives or powers are not sufficient to meet supervisory outcomes.

Given this premise, initiating or proposing legislation is the only legal and publicly accountable method to address the problem.

The proposed change to 2.2 is a good catch.

We are puzzled by the NAIC comment on proposed ICP 2.4.3: "The text as drafted seems to suggest something rather specific, whereas supervisors in some jurisdictions may not need a plan that contains all those elements as their responsibilities are set out by statute."

Proposed 2.4 and 2.4.3 state:

Accountability

The supervisor has effective internal governance structures, processes and procedures to preserve the integrity of its actions and decisions and to enable it to be accountable to its stakeholders.

The supervisor should have a process to develop and implement a strategic or operational plan that sets out its goals and priorities for a given period of time, such as a two or three year span. The supervisor should report on its performance against such a plan to the government and other relevant stakeholders.

As a means of public accountability, 2.4.3 seems reasonable and not particularly specific.

Regarding the NAIC comment on proposed ICP 2.5, as noted above, we disagree that policyholder protection clearly encompasses financial stability.

The comment on 2.7.2 suggesting "supervisor making available publicly information that relates to its goals and objectives as well as its decisions" seems to create a false dichotomy.

Proposed 2.7.2 states:

The supervisor should seek to publish a report at least annually that contains the elements listed above and that describes the supervisor's activities in light of its objectives in the previous year. This type of report is a key document by which a supervisor accounts to its stakeholders.

The proposed 2.7.2 is not inconsistent with making other information available, but sets a reasonable floor consistent with the annual reporting by every regulated business.

The NAIC comments on proposed ICP 2.9.3 propose the addition of unneeded verbiage. The NAIC proposes:

This review could lead the supervisor to implement measures to bridge any gaps in numbers and/or skills where necessary.

It is unclear why the additional words are needed. If the review did not lead the supervisor to implement measures or skills, it was, ipso facto, not necessary.

We support the original NAIC draft comment on ICP 18.04. The revised NAIC comment on ICP 18.04 is, generally, that referral needs to be more clearly defined to ensure that a referring party does not avoid applicable oversight as an intermediary. We suggest that the way to define a referral which does not trigger oversight would be one in which the referring party receives no compensation directly or indirectly from the insurer or intermediary. That is precisely what the original NAIC comment included. This is particularly important in an era when anyone can have a web page or blog recommending all types of products and services.

The IIABA argues that it sees no public policy rationale for requiring a “new” licensing trigger:

Specifically, the proposal would call for the licensing requirement to be triggered if a person does not sell, solicit, or negotiate insurance yet merely “receives compensation based upon the placement of insurance by an insurance intermediary.”

The IIABA seems to be saying that someone making a referral and receiving compensation for the referral would not be doing the things the IIABA says should trigger a license: any person who discusses policy terms with a consumer, advises a consumer regarding insurance coverage, offers related recommendations, or urges the purchase of particular coverage.” This description would clearly encompass a referral for compensation.

We do not understand the NAIC comment on ICP 18.3.8 which states:

Intermediary firms should have procedures to assess the integrity of those intermediating on their behalf. Such procedures should include pre-employment checks as well as ongoing requirements. Pre-employment checks should include, amongst other things, employment history, any civil liability, criminal convictions or pending legal proceedings.

The NAIC comment seems out of place:

In addition to the items listed in this section, consideration should be given to including administrative actions by regulatory agencies and Self-Regulatory Organizations.

The NAIC’s comment on ICP 18.5.17 urges change from intermediaries acting in consumers’ best interest to simply consumers’ interest. Best interest is a well-understood term and standard of care. In contrast, “consumer interest” lacks meaning and precision. The NAIC, through the Annuity Suitability Working, as well as the life insurance industry, have recognized that a best interest standard of care is reasonable and necessary and that a standard of care greater than suitability is needed.

Further, the purpose of the ICPs is to establish insurance core principles for supervision, not to protect particular groups of insurers or intermediaries. While the IIABA is free to market its members as Trusted Advisors who work in the consumers best interest while fighting any actual responsibility to do so, that niche in the U.S. should not upend a best interest standard of

care as a core principle and one acknowledged in most the U.S. as well as around the world. Finally, this portion of the ICPs deals with identifying and managing conflicts of interest. Removing “best” robs the ICP of its substance – a conflict between the interests of the intermediary and those of the consumer. Removing “best” puts both interests on equal footing when the consumers’ interest should be best.

With regard to the NAIC’s proposed comment on ICPs 19.8.4 and 19.8.5, the NAIC takes issue with the term “inducement” as having negative connotations. In the context of 19.8.4 and 19.8.5, the term is specifically defined in 19.8.5 and the term is used specifically to highlight a negative outcome – a conflict of interest.

The proposed 19.8.6 states:

Generally, the payment or acceptance of an inducement or any non-monetary benefit, to or from a third party, may be considered to create a conflict of interest. In some jurisdictions, this is deemed not to be problematic if the payment or receipt does not impair compliance with the insurer’s or intermediary’s duty to act in the customer’s best interests where such a duty exists. Ultimately, the payment or receipt of an inducement should not be accepted if it leads to customer detriment.

We disagree with the NAIC’s comment, which states:

If the reference to inducements is left in the ICPs, the first sentence should be deleted or rephrased to clarify than an inducement *may* lead to a conflict of interest. It should not be presumed an inducement creates a conflict of interest. In addition, the use of the phrase “customer’s best interest” may suggest a fiduciary duty. Suggest using the phrase “customer’s interests” instead

The proposed ICP is clear – an inducement, as defined in the previous paragraph – may be considered to create a conflict, but, depending on the nature of the inducement, may not impair the intermediary’s ability to act in the consumer’s best interest. For example, a commission compensation structure that aligns the consumer’s and intermediary’s interest will not impair the ability to act in the consumer’s best interest. Other compensation structures will create a conflict of interest that cannot be overcome. The ICP language provides a logical progression and analytic tool. In contrast the NAIC comment creates an ambiguous and circular approach – inducements may or may not create a conflict of interest coupled with a neutering of the concept of conflict of interest by removing “best” from consumers’ best interest.

The NAIC’s comment on ICP 19.11.1 that a complaint should be limited to a written expression of dissatisfaction is anti-consumer and inconsistent with U.S. state regulators’ procedures for which consumers are encouraged to call toll free lines to register a complaint. In many instances, the regulator will convert the call into a written complaint.