**Commissioner's Column**

**December 2014**

**Federal Legislative Tracking**

We saw another busy year for federal insurance legislation during 2014 with Congress going down to the wire with several critical insurance bills on the last week in session before the end of the 113th Congress. I have previously kept you informed the most significant insurance bills by way of this medium throughout the year. Even as recently as October I spoke to you on **S.2244**, the national Terrorism Risk Insurance Program Reauthorization Act known as TRIPRA. This program expired on December 31 when the U.S. Senate failed to concur in House amendments to the Senate bill. Enactment of TRIPRA would have contributed to stability in the commercial insurance market and business sector for the next six years by lowering investment risk and concerns over terrorist attacks on commercial locations.

Terrorism risk has typically not been an insurance matter that is at the top of the list with regard to coverage concerns for persons who own/operate most commercial structures and buy commercial property coverage in Louisiana. Any premium is a low amount since the loss is a low frequency loss. But, prices can vary and companies choose to sell or not sell terrorism insurance.

Failing to renew the Terrorism Risk Insurance Program (TRIP) will have an impact not only on the insurance industry, but also on the real estate, mortgage lending and construction markets, nationally. Terrorism insurance is an important component of commercial mortgage backed securities (CMBS) since loan documentation requires terrorism insurance. We may see CMBS servicers begin to force-place coverage from their carriers at a high premium if coverage is even available. We will also see an impact on insurability of high risk structures and events based on costs and availability of coverage without the federal backstop.

Another market area that may be impacted by the expiration of TRIP is workers comp. We could see a reduction in underwriters' willingness to write Workers Comp insurance in large metropolitan areas thought to be terrorism targets. Workers' compensation writers are forbidden from excluding terrorism coverage in their policies, so they would be forced to drop coverage in areas where risks are unacceptable.

AM Best said it would take no adverse rating action "at this time" based on the expiration of TRIP at the end of December. I'm sure AM Best staff will continue to monitor what the new Congress does when it convenes in January. The insurance industry and regulators are hopeful that Congress will take up TRIP in early 2015, but for now insurers must prepare for managing risk exposures without the terrorism coverage that has been in place in various forms since 2002, post 911. All companies will need to review policy language and rates charged in light of the fact that the federal backstop is gone. They may need to make filings with LDI to address these changes.

Fortunately, this year we saw resolution to the unacceptable flood insurance rate increases of Biggert-Waters of 2012 with the passage of **H.R.3370** - the Homeowner Flood Insurance Affordability Act, which I discussed in my April Commissioner's Column. The bill's provision that restores subsidized flood insurance rates or grandfathering is critical in getting Louisiana's economy moving in flood-prone areas. For non-grandfathered homes, when updated flood maps result in increased risk premium, flood insurance rates will continue to increase, but increases with not be as large or as fast as they would have under Biggert-Waters. Increases will be phased in over a five-year period at a rate of up to 18 percent per year. The bill ensures the financial stability of the National Flood Insurance Program (NFIP), which currently is $24 billion in debt, while providing property owners with continued protection.

Another significant topic for 2014 is the progressive roll-out of ObamaCare across the nation. Many components of this Act are now effective with a few left for implementation in 2015. Resulting from the Act, we have seen more people having health insurance but at higher premiums in Louisiana. Open enrollment for the 2015 plan year, whether on or off the marketplace, is now under way and runs through February 15. Beginning with the 2014 federal tax filings due in April, we will see the impact of penalties for non-participation for the first year, which will be even higher for 2015 and 2016. You will see these details in my July Commissioner's Column.

A critical Obamacare case will be heard by the Supreme Court with oral arguments on March 4, 2015 and a final decision expected by the end of June. The plaintiffs in *King v. Burwell* challenge the authority of the Internal Revenue Service to grant tax credits for health coverage purchased through insurance exchanges run by the federal government. The issue is how much discretion the IRS and administration have to interpret the meaning of an exchange "established by the state." With 36 states opting not to run exchanges, a decision supporting the specific wording with no latitude for interpretation will strike at the heart of the program, which has the goal of providing affordable health insurance through tax subsidies for those with qualifying incomes.

The subject of state-based insurance regulation versus federal regulation is always a topic brewing at the nation's Capitol. During 2014, a debate arose over Section 171 of Dodd-Frank, which contained an ambiguity that subjected insurers' capital standards requirements to the same "generally accepted accounting principles" used in banking. The Federal Reserve Board, most lawmakers and the insurance industry agreed this was not intended. They agreed that when determining insurance industry capital standards, reliance should remain on "statutory accounting principles" used by state regulators. This was corrected in **S.2270**, the Insurance Capital Standards Clarification Act, which was passed in the nick of time, just before the Congressional Christmas break. Signed by President Obama on December 18, the bill prevents the use of bank-centered capital standards for insurance companies subject to federal oversight under Dodd-Frank.

The National Association of Insurance Commissioners (NAIC) meets with Congressional representatives each year to push back against such encroaching regulatory issues. NAIC rallies support for state–based insurance regulation, where the many needs of individuals may better be addressed. This topic is discussed in the September Commissioner's Column.

Prior to the passage of **S.2270**, the Financial Stability Oversight Council (FSOC) found a way through Section 171 of Dodd-Frank to declare three of the nation's largest insurers as systemically important financial institutions (SIFIs), requiring stricter prudential standards such as heightened capital requirements. The most recent designation was given to MetLife. MetLife can choose to pursue an appeal in federal court.

With this Commissioner's Column I will provide a listing of the various federal insurance related bills that have seen action since being introduced in 2013 and 2014. Many other bills impacting the insurance sector were introduced in 2014, but have yet to see action. If you would like additional information, you can give us a call or contact your U.S. Senator or Representative. These bills can be tracked at www.congress.gov.

## 2013-14 Federal Insurance Bills Having 2014 Action

### Property and Casualty Bills

H.R.1786 – National Windstorm Impact Reduction Act Reauthorization of 2014 – Amends the National Windstorm Impact Reduction Act of 2004. Establishes the National Institute of Standards and Technology for planning and coordinating the National Windstorm Impact Reduction Program and allocates $21.4 million to the program each year through 2016.
Latest Action: 07/15/2014 Received in the Senate and referred to the Committee on Commerce, Science, and Transportation.

**H.R. 3370** – Homeowner Flood Insurance Affordability Act of 2014 - Repeals many of the provisions of the Biggert-Waters Flood Insurance Reform Act of 2012.
Latest Action: 03/21/2014 Became Public Law No: 113-89.

**H.R.3547** – Consolidated Appropriations Act of 2014 – This is a $1.1 trillion omnibus federal spending bill that includes language to delay for one year, implementation of Section 207 of Biggert-Waters, which affects properties that will see premium changes based on FEMA map change or have grandfathered premium rates based on older flood risk maps.
Latest Action: 01/17/2014 Became Public Law No: 113-76.

**S.1926** – A bill to delay the implementation of certain provisions of the Biggert-Waters Flood Insurance Reform Act of 2012 and to reform the National Association of Registered Agents and Brokers, and for other purposes - This bill combines a Senate flood insurance rate delay bill (same text as S.1610, S. 1846. H.R. 3370) with the Senate NARAB II bill (S. 534).
Latest Action: 01/31/14 Passed the Senate. See H.R.3370, which became Public Law 113-89 on 3/21/2014.

**S.2137** – A bill to Ensure that Holders of Flood Insurance Policies Under the NFIP… - Prohibits FEMA from providing refunds for premiums paid on second homes.
Latest Action: 03/13/2014 Passed the Senate and referred to House Financial Services.

### Health Bills

**H.R.1814** – EACH Act (Equitable Access to Care and Health Act) - Allows an additional religious exemption from medical health care regarding minimum essential health care coverage requirements of the Patient Protection and Affordable Care Act (PPACA).
Latest Action: 03/12/2014 Passed in the House and received in the Senate.

**H.R.2575** – Save American Workers Act of 2014 - Amends the IRS Code, based on the PPACA to redefine "full-time employee" as an employee who is employed on average at least 40 hours a week.
Latest Action: 04/08/2014 Passed the House and placed on Senate Legislative Calendar.

**H.R.4015** – SGR Repeal and Medicare Provider Payment Modernization Act of 2014, similar to H.R. 2810 and S. 1871 – addresses the Medicare "sustainable growth rate" (SGR) physician payment adjustment system.
Latest Action: 03/24/2014 Passed the House and received in the Senate.

**H.R.3362** – Exchange Information Disclosure Act – Amends the PPACA to expand reporting requirements by Health and Human Services (HHS) related to health care exchanges to a weekly basis.
Latest Action: 01/27/2014 Passed the House and referred to the Senate Committee on Health, Education,

Labor, and Pensions.

**H.R.3474** – Hire More Heroes Act of 2014 – Allows employers to avoid the employer coverage mandate of PPACA by allowing the exclusion of veterans with Tricare or other VA health insurance coverage to be excluded from “full-time equivalent” employee calculations.
Latest Action: 05/15/2014 Passed the House, cloture motion on the measure withdrawn in Senate.

**H.R.3522** - Employee Health Care Protection Act of 2013 - Allows a health insurer that had group coverage in effect on any date in 2013 to continue to sell that coverage as a grandfathered plan after 1/1/2014.
Latest Action: 09/15/2014 Passed the House and received in the Senate.

**H.R.4118** – SIMPLE Fairness Act - Delays until 2015 the imposition of the monthly penalty amount on individual taxpayers for failure to purchase minimum essential health care coverage.
Latest Action: 03/10/2014 Passed the House and placed on Senate Legislative Calendar.

**H.R.4302** – Protecting Access to Medicare Act of 2014 - Delays through March 31, 2015 the pending cut to Medicare, which has been delayed for over a decade, among other things.
Latest Action: 04/01/2014 Became Public Law No: 113-93.

**H.R.4414** – Expatriate Health Coverage Clarification Act of 2014 – Exempts expatriate health plans from the provisions of the Affordable Care Act
Latest Action: 04/30/2014 Passed the House and received in the Senate.

**Financial Stability Oversight Council and Capital Standards Bills**

**H.R.4387** – FSOC Transparency and Accountability Act – Requires the FSOC to adhere to federal open-meeting standards and addresses several other matters regarding meetings.
Latest Action: 06/20/2014 Introduced and ordered to be amended in committee.

**H.R.5016** – Financial Services and General Government Appropriations Act – A committee summary report on the bill emphasizes that neither Treasury nor FIO have insurance regulatory authority. Rather the authority resides with the states. U.S. representation at international insurance supervisory organizations should be united and align with the objectives of state insurance regulators. The Treasury Inspector General should submit a report to Congress on Treasury’s process for developing consensus with state insurance commissioners regarding international insurance standards.
Latest Action: 07/17/2014 Passed the House and sent to the Senate Committee on Appropriations.

**H.R.5018** - Federal Reserve Accountability and Transparency Act of 2014 - Amends Dodd-Frank to direct the Federal Reserve Board to issue regulations that provide for the at least three different sets of conditions and related methodologies required under current law for the evaluation of non-bank financial companies and certain bank holding companies with over $50 billion in assets among other matters.
Latest Action: 07/30/2014 Introduced and ordered to be amended.

**H.R.5461** - To clarify the application of certain leverage and risk-based requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act… - The bill includes four individual bills, one being the

“Insurance Capital Standards Clarification Act of 2014” that would provide the Federal Reserve flexibility to tailor holding company capital standards to SIFI’s and Savings and Loan Holding Companies to the insurer business model. In addition to capital standards, the overall legislative package includes bills related to

collateralized loan obligations, points and fees in mortgage transactions, and end user exemptions.
Latest Action: 09/17/2014 Passed in the House and referred to the Senate Committee on Banking, Housing, and Urban Affairs.

**S.2270** – Insurance Capital Standards Clarification Act of 2014 – Revised Sec. 171 of Dodd-Frank referred to as the "Collins Amendment." The bill provides the Federal Reserve flexibility to tailor holding company capital standards to Systemically Important Financial Institutions (SIFIs) and Savings and Loan Holding Companies to the insurer business model for capital requirements. Previous rule was to become effective in January, 2015, subjected insurers to the same capital standards written for the banking industry. This was apparently an unintended error in drafting the bill and is corrected in **S.2270**. House companion legislation is H.R. 4510.
Latest Action: 12/18/2014 Signed by President

**Terrorism Risk Insurance Bills**

**S.2244** – Terrorism Risk Insurance Program Reauthorization Act of 2014 (TRIPRA) – Amended the Terrorism Risk Insurance Act of 2002 (TRIA) to extend the Terrorism Risk Insurance Program (TRIP) for six years through December 31, 2020 and revise requirements for the Program. It doubled the amount of losses required to trigger TRIP from $100 million to $200 million at a rate of $20 million a year beginning in 2016. It set insurers' co-payments to 20 percent of losses, up from 15 percent in 2014. The bill also increased the federal government's mandatory recoupment in the event of a catastrophic terrorist attack from $27.5 billion to $37.5 billion in $2 billion annual increases beginning in January 2016.

**S.2244** also created a nonprofit board that allowed insurance agents and brokers to obtain certification to operate in multiple states. The bill revised those who would certify an event as an act of terror to include the Treasury Secretary and the Homeland Security Secretary. Three other bills that would extend TRIP were introduced in the House and did not see any action.
Latest Action: 12/11/2014 Passed the Senate.

**Agriculture Bills**

**H.R.2642** – Agricultural Act of 2014 (Farm Bill including Federal Crop Insurance) - A nearly $100 billion-a-year measure that included a major boost for crop insurance premium subsidies with a financial cushion for farmers who face unpredictable weather and market conditions. It contains a cap on the overall amount an individual farmer can receive at $125,000 in a year. The bill slightly reduced the amount paid in the $80 billion a year food stamp program, which aids one in seven Americans.
Latest Action: 02/07/2014 Became Public Law No: 113-79.