CROSS-PRACTICE ISSUES
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2017 Academy Legislative/Regulatory Review

The American Academy of Actuaries presents this summary of select significant regulatory and legislative developments in 2017 at the state, federal, and international levels of interest to the U.S. actuarial profession as a service to its members.

Introduction

Key public policy debates in the Academy’s focus in 2017 included health care reform, tax reform, flood insurance, employer-sponsored retirement plans, and the structure and scope of financial and insurance regulatory bodies, among other topics.

Both houses of Congress were active in considering legislation to fully or partially repeal and/or replace the Affordable Care Act, although no health care-specific bills were successfully enacted. Tax reform also was a prominent issue in Congress, with efforts culminating in the Tax Cuts and Jobs Act, signed into law in December. The new law includes the repeal of the Affordable Care Act’s penalty for individuals without health insurance, known as the individual mandate. However, it did not include changes to tax treatments of retirement plans, which were previously considered by some policymakers.

In anticipation of the tax reform debate, the Academy sent a letter to Congress in August that outlined these potential effects and reminded lawmakers of the importance of an actuarial perspective when considering tax policy changes. The Academy also published an Essential Elements paper in November highlighting select tax treatments of pensions and insurance protections, and outlining the potential public policy trade-offs of changes to the tax code.

Many of the issues the Academy worked on in 2017 will carry into 2018 as the president and the Republican-led Congress continue to pursue their stated goals of health care reform; changes to safety-net programs such as Social Security, Medicare, and Medicaid; and rolling back federal regulation of the financial and insurance industries, among others. A continuing resolution to temporarily fund the federal government through mid-January included temporary authorization of the National Flood Insurance Program (through Jan. 19) and the Children’s Health Insurance Program (through March), and lawmakers may take up longer-term reauthorizations for these programs this year.
In 2018, the Academy will continue to comment and engage on key issues with policymakers, including the Trump administration, Congress, insurance commissioners, state regulators and legislators, and national and international standards setters.

Practice Area Issues

Casualty Practice Issues

Auto Insurance Affordability
The Treasury Department’s Federal Insurance Office (FIO) released a study in January concluding that auto insurance is unaffordable for 18.6 million Americans. Assumptions about affordability were made based on whether annual insurance premiums are less than or equal to two percent of household income. The study breaks down affordability by ZIP code and compares the median average household income against auto insurance prices.

Autonomous Vehicles
The U.S. House of Representatives approved the Safely Ensuring Lives Future Deployment and Research in Vehicle Evolution (SELF DRIVE) Act, H.R. 3388, on Sept. 6. If approved by the Senate and signed into law by the president, the law would be the first of its kind that clarifies the currently unclear roles of federal and state laws in governing autonomous vehicles by giving federal law preemption over certain state laws and regulations, while states would remain responsible for overseeing vehicle registration, licensing, insurance, and safety inspections, among other things. To help ensure the safety of autonomous vehicles, the bill directs the U.S. Secretary of Transportation to issue a rule requiring manufacturers to show how they are addressing safety concerns and establishes a Highly Automated Vehicle Advisory Council within the National Highway Traffic Safety Administration (NHTSA).

Mortgage Insurance
The U.S. Government Accountability Office (GAO) released a report on budgetary and actuarial reviews of the Mutual Mortgage Insurance Fund (MMI Fund) by the Federal Housing Administration (FHA) on Dec. 11. The GAO found that the capital requirements and stress-testing practices used by FHA to evaluate the MMI Fund are inconsistent with a framework developed by the GAO to evaluate such tools. Inconsistencies in FHA’s practices included unspecified risk thresholds for statutory capital requirements, an absence of accountability mechanisms and fund-wide stress tests, and undefined stress-test objectives. The framework developed by the GAO to assess the FHA’s capital requirements and stress-testing practices was based on capital and stress-testing principles used by financial institutions and regulators, with feedback provided by members of the Academy’s Casualty Practice Council and federal and mortgage industry officials.

The MMI fund was identified as a high-risk program in a Feb. 15 GAO “High-Risk Series” report to congressional committees on financially troubled federal programs. The GAO found that the two percent capital requirement for FHA’s fund may not be adequate, and determined that Congress needs to specify the economic scenarios that the program must be able to withstand in order to ensure FHA’s long-term health.
National Flood Insurance Program (NFIP)
The NFIP received several short-term reauthorizations over the course of the year, with the latest extending the program until Jan. 19, 2018. The NFIP also had $16 billion in debt canceled in October as claims from Hurricanes Harvey, Irma, and Maria pushed the program close to exhausting its borrowing authority. A bill, H.R. 2874, that would reauthorize the NFIP for five years and make several revisions to the program was passed by the U.S. House of Representatives in November. The U.S. Senate has yet to consider its own version of an NFIP reauthorization. The Academy’s Casualty Practice Council (CPC) sent a letter to the U.S. House of Representatives in November providing comments on the House bill, as well as recommendations for improving the NFIP’s sustainability. The CPC in August sent a letter to the U.S. Senate Committee on Banking, Housing, and Urban Affairs urging reauthorization and reform of the NFIP.

The Congressional Budget Office (CBO) on Sept. 1 released a report, The National Flood Insurance Program: Financial Soundness and Affordability, which estimated that the NFIP’s annual revenue is approximately $1.4 billion less than its projected expenses (although it did not reflect the additional losses due to the three hurricanes). The report cited a monograph issued by the Academy’s Flood Insurance Work Group in April that provides an actuarial perspective on the NFIP’s challenges and discusses alternative approaches to handling catastrophic losses from mega-storms.

The GAO released a report to Congress on April 27 that presented multiple objectives of the NFIP and cautioned that reforms proposed for any one aspect of the program should be weighed against their possible adverse effects on other objectives. The GAO previously identified the NFIP as a high-risk program in a Feb. 15 “High-Risk Series” report to congressional committees on financially troubled federal programs. The GAO found that the program’s financial health has improved but cites a “lack of sufficient revenue” as a key concern with regard to claims from catastrophic losses. The GAO recommended that Congress continue to address “the competing goals of solvency and affordability” in order to remove the NFIP from the high-risk list.

Tax Treatment for Property/Casualty (P/C) Insurers
A tax reform bill passed by Congress and signed into law (PL 115-97) by the president in December includes a provision to modify the proration rule for P/C insurers by increasing the amount insurers can reduce deductible reserves from 15 percent to 25 percent, and linked the percentage to changes in the corporate tax rate to maintain an effective tax rate of 5.25 percent. The law also includes a provision that requires reserve discounting for P/C insurers based on a higher interest rate determined under a corporate bond yield curve, and repeals the election to use the company’s own loss payment patterns.

Terrorism Risk Insurance
The FIO in June released a study of the role of small insurers in providing terrorism risk coverage. The report found that small companies tend to have a greater geographic concentration of risk in the event of a localized attack and appear to be vulnerable to not carrying sufficient reinsurance to deal with situations where cumulative losses from a terrorist attack exceed their reserves but are too small to trigger access to federal government assets. The report also found
that solvency risk appears to be magnified in cases where small insurers are providing workers’ compensation coverage, which is required to include terrorism risk.

The GAO released a report in January on alternatives to the Terrorism Risk Insurance Program whereby the federal government provides a high-level backup to the private market for terrorism risk insurance. The report found that the current structure of the program poses a risk that the federal government might not be able to fully recoup its share of the losses in the event of a major terrorist event. However, the report also found that leading alternatives to the current program also would face a mix of challenges that make them problematic.

**Workers’ Compensation**

An Alabama Circuit Court ruled the state *Workers’ Compensation Act* unconstitutional on May 8. In the case, *Nora Clower vs. CVS Caremark*, Jefferson County Circuit Judge Pat Ballard ruled that two sections of the workers’ compensation law are unconstitutional and, because of the act’s nonseverability provision, the entire law is unconstitutional. The two sections of the law at issue were the state’s $220 cap on weekly permanent partial disability (PPD) and a 15 percent cap on attorney’s fees. On May 17, the judge issued an order for an indefinite stay on the ruling in order “to allow the legislature sufficient time to remedy the Constitutional insufficiencies in the act....” The Alabama Legislature has not taken any action to address the *Workers’ Compensation Act* following the ruling.

**Health Practice Issues**

**Affordable Care Act (ACA)**

The ACA faced several challenges in the U.S. Congress, the administration, and U.S. Courts throughout 2017. Key developments included:

**Challenges to the ACA**

- A tax reform bill passed by Congress and signed into law (PL 115-97) by the president in December included a provision repealing the ACA’s penalty for individuals without health insurance coverage, known as the individual mandate. The repeal of the mandate will take effect on Jan. 1, 2019. The new law also included a provision to expand the medical expense deduction for two years.

- The U.S. House of Representatives passed H.R. 849 in November, which would repeal the Independent Payment Advisory Board (IPAB) created by the ACA to make recommendations to reduce growth in Medicare per capita expenditures in the event that Medicare spending exceeds a targeted growth rate. The CBO estimated that repealing IPAB would increase Medicare spending by $17.5 billion over the next decade.

- The Bipartisan Health Care Stabilization Act of 2017 was introduced in the U.S. Senate in October. The bill would provide federal reimbursements to insurers for cost-sharing reductions (CSRs) through 2019 and also would make several changes to the ACA’s State 1332 Innovation Waivers.

- The Trump administration announced the immediate discontinuation of federal CSR reimbursements to insurers in October following a legal opinion from the U.S. Attorney General. A request for a preliminary injunction submitted by 18 states and the District of Columbia to stop the termination of CSR reimbursements was denied by the U.S. District
Court for the Northern District of California shortly afterwards. In a similar case regarding CSRs, the U.S. Court of Appeals for the District of Columbia Circuit ruled on Aug. 2 that states have the legal right to defend the ACA’s CSRs. The decision allowed 17 states and the District to intervene in House v. Price, challenging a lower court’s ruling that the ACA’s reimbursements for CSRs were not properly appropriated by Congress.

- President Trump signed an executive order in October directing the Secretary of Labor to “consider” expanding access to association health plans (AHPs), as well as directing the Departments of Labor, Treasury, and Health and Human Services to consider expanding coverage through short-term limited duration health plans, which do not meet ACA coverage requirements. The order also directs all three departments to consider changes to health reimbursement arrangements (HRAs), which reimburse employees for health care costs.

- After two failed votes on significant health care legislation, the U.S. Senate concluded debate on a budget reconciliation bill in July without passing any legislation. Attempts to, in part, repeal and/or replace the ACA ended (with the notable exception of the individual mandate repeal in the Tax Cuts and Jobs Act) with a failed vote on the Healthcare Freedom Act, which would have repealed the ACA’s individual mandate, repealed the employer mandate through 2024, extended the moratorium on the medical device tax for three more years, and modified aspects of the state innovation waivers.

- A bill to repeal and replace the ACA, the American Health Care Act of 2017, was passed by the U.S. House of Representatives in May. The bill would have eliminated the individual mandate; phased out the Medicaid expansion to end Dec. 31, 2019; repealed the cost-sharing subsidy for insurers effective Dec. 31, 2019; established the Patient and State Stability Fund to help subsidize high-cost enrollees; and eliminated ACA taxes, including the Medicare Hospital Insurance (HI) surtax.

- An executive order was signed by the president on Jan. 20 that grants to relevant agencies the exercise of “all authority and discretion available to them to waive, defer, grant exemptions from, or delay the implementation of any provision or requirement of the Act that would impose a fiscal burden on any State or a cost, fee, tax, penalty, or regulatory burden on individuals, families, healthcare providers, health insurers, patients, recipients of healthcare services, purchasers of health insurance, or makers of medical devices, products, or medications.”

**Regulatory Activities**

- The Center for Consumer Information & Insurance Oversight (CCIIO) on Dec. 28 published the following items:
  - The final 2019 Actuarial Value calculator and methodology; and
  - Medical Loss Ratio (MLR) data, and a report summarizing MLR results, for the 2016 reporting year.

- The Centers for Medicare & Medicaid Services (CMS) in October released the proposed Notice of Benefit and Payment Parameters (NBPP) for 2019. The proposed rule would, among other things: make several adjustments to the risk adjustment methodology; maintain the user fee rate of 3.5 percent for federally facilitated marketplaces and increase the state-based marketplace (using the federal platform) user fee to 3.0 percent of premium; and increase state options for Essential Health Benefits.
The CMS released public use data in October on health insurance exchanges and rates for 2018. The data include health insurance exchange public use files and rate review data.

The CMS released a final rule in April that:
- Changed the dates for open enrollment in the individual markets for the benefit year starting Jan. 1, 2018. Individuals are therefore required to enroll in coverage prior to the beginning of the year.
- Increased pre-enrollment verification of individual market special enrollment periods for states served by the HealthCare.gov platform.
- Finalized an increase in the *de minimis* variation in the actuarial values used for determining metal levels of coverage for the 2018 plan year and beyond.
- Addressed the role of states in supervising their health insurance markets.

The CCIIO on April 13 published the following items:
- The final 2018 Actuarial Value Calculator and Methodology.
- Guidance to states on review of Qualified Health Plan certification standards in federally facilitated marketplaces for plan years 2018 or later.

The CMS issued a bulletin on Feb. 23 announcing the extension of the transitional policy for non-grandfathered plans in the individual and small group health insurance markets through 2018. States can opt to allow issuers to renew transitional (grandmothered) coverage for a policy year starting on or before Oct. 1, 2018. These plans cannot extend past Dec. 31, 2018.

The Academy’s Health Practice Council released several policy papers, comment letters, and other materials related to the ACA in 2017, including:
- A letter in November to the U.S. Departments of Treasury, Labor, and Health and Human Services (HHS) on the October 12 executive order.
- Letters to congressional leadership on proposals to reform health insurance through:
  - The American Health Care Act;
  - The Better Care Reconciliation Act;
  - The Graham-Cassidy-Heller Johnson Proposal; and
  - The elimination of the individual mandate.
- A letter to the Senate’s Health, Education, Labor and Pensions Committee during a series of bipartisan hearings in September on what is needed to stabilize the individual health insurance markets.
- A policy paper in July highlighting several frequently asked questions on risk pooling and explaining how it works in the individual health insurance market.
- An issue brief by the Individual and Small Group Markets Committee in July on the major components driving premium changes for 2018.
- A policy paper in July emphasizing why CSRs should be permanent and automatic.
- An issue brief in April examining ways in which the individual health insurance market can be strengthened and made more viable.

*Children’s Health Insurance Program (CHIP)*

Statutory funding for CHIP expired on Sept. 30, leaving many states with the prospect of being
unable to continue their programs beyond 2017. A short-term appropriations bill, H.R. 1370, passed on Dec. 22 included $2.8 billion in short-term funding for CHIP—sufficient to keep the program funded through March 2018. A bill that would have reauthorized CHIP for five years, with several pay-fors, including changes to Medicare and Medicaid, passed the U.S. House of Representatives on Nov. 3; however, consensus was not reached on final longer-term reauthorization before Congress adjourned for the year.

Medicaid
Voters in Maine approved a referendum in November to accept the optional Medicaid expansion provided under the ACA. The vote marked the first use in the country of a ballot measure to expand Medicaid.

A bill to create a state public health insurance option, also referred to as a Medicaid “buy-in,” was introduced in the U.S. Senate in October by Sen. Brian Schatz (D-HI) and a companion bill was introduced in the U.S. House by Rep. Ben Ray Luján (D-N.M.). The bill would allow states to expand Medicaid eligibility to all residents, with some limitations. The bill also would increase the Federal Medical Assistance Percentage match, as well as provide income-based premiums and CSRs for the newly created public option to assist low- and middle-income individuals.

The Medicaid program was identified as a high-risk program in a Feb. 15 GAO “High-Risk Series” report to congressional committees on financially troubled federal programs. The GAO concluded that Congress should consider requiring the CMS to improve guidance concerning supplemental payment reporting. Other recommendations include having the CMS and HHS address financing, oversight, and access-related issues. Growing levels of improper Medicaid payments also were cited as a concern. The Academy’s Medicaid Funding Work Group published an issue brief in March addressing key design elements of proposed Medicaid funding approaches, such as block grants and per capita caps, in relation to program sustainability.

Medicare
A bill to create a Medicare public health insurance option that would be available to all Americans was introduced in the U.S. Senate in October. Separate legislation that would create a universal, single-payer health insurance program based on Medicare was introduced in the Senate in September.

The 2017 Medicare trustees’ report, released in July, showed an improvement in the program’s financial condition from the previous year, primarily reflecting lower than estimated spending in 2016 and lower projected inpatient hospital utilization. The HI trust fund will have sufficient funds to cover its obligations until 2029, after which dedicated revenues would cover 88 percent of HI costs. The projected HI deficit over the next 75 years is 0.64 percent of taxable payroll, down from 0.73 percent in 2016. The Supplementary Medical Insurance trust fund is expected to remain solvent indefinitely, with spending expected to grow from 2.1 percent of GDP in 2016 to 3.4 percent of GDP in 2037 and then more slowly to 3.7 percent of GDP by 2091. The Academy’s Medicare Subcommittee published an issue brief, Medicare’s Financial Condition: Beyond Actuarial Balance, in July detailing significant concerns about Medicare’s long-term financial health.
The Medicare program was identified as a high-risk program in a Feb. 15 GAO “High-Risk Series” report to congressional committees on financially troubled federal programs. The GAO found that Medicare needs more federal oversight due to its “size and complexity,” the scope of “ongoing changes,” and the high number of improper Medicare payments.

**Life Practice Issues**

**Captives**
The Financial Stability Oversight Council (FSOC) on Dec. 14 published its 2017 Annual Report, which included a recommendation that state insurance commissioners and the National Association of Insurance Commissioners (NAIC) continue working to strengthen controls on life insurers’ use of captive reinsurance transactions, as well as the transparency of such transactions.

**Mortality Tables**
The Academy’s Life Experience Committee and the Society of Actuaries’ Preferred Mortality Oversight Group in July submitted a 2017 Guaranteed Issue and Simplified Issue Mortality Tables report for consideration by the NAIC.

**National Association of Insurance Commissioners (NAIC)**
The NAIC Life Actuarial (A) Task Force in April adopted a proposal for VM-22: Maximum Valuation Interest Rates for Income Annuities.

**Principle-Based Reserving (PBR)**
PBR went live in 2017. At the fall NAIC meeting, the Principle-Based Reserving Implementation (EX) Task Force voted on Dec. 4 to disband, along with the PBR Review (EX) Working Group and the PBR Review Procedures (EX) Subgroup. Going forward, the Life Actuarial (A) Task Force and the Financial Condition (E) Committee will take on any tasks relating to PBR. The move follows other actions on PBR earlier in the year, including the wrap-up of the PBR Pilot Project.

To date, 47 states representing more than 87 percent of U.S. direct written premiums have adopted a new Standard Valuation Law to enact PBR. This exceeds the threshold of 42 states and territories with 75 percent of written premium set by the NAIC for implementation of the Valuation Manual (VM), and life insurers in most states were able to start utilizing PBR on Jan. 1, 2017.

**Tax Reform**
A tax reform bill passed by Congress and signed into law (PL 115-97) by the president in December included a provision to reduce deductible life insurer reserves by 7.19 percent. The impact of the bill is still being determined with regards to Risk-Based Capital (RBC).

**Pension Practice Issues**

**Defined Benefit (DB) and Defined Contribution (DC) Plans**
Two bills were introduced in the U.S. House of Representatives by Rep. Richard Neal (D-MA) in November:
• **H.R. 4523**, *The Automatic Retirement Plan Act of 2017*, would require nearly all employers to provide a retirement plan for all of their employees, with a few exceptions for certain businesses and employees. The bill would require new retirement plans to include auto-enrollment features with automatic escalation, and lifetime income distribution options.

• **H.R. 4524**, *The Retirement Plan Simplification and Enhancement Act of 2017*, would establish new automatic enrollment safe harbors, portable in-plan lifetime income options, and incentives for employers to provide, and encourage participation in, retirement plans. The bill also would establish an Office of Participant and Plan Sponsor Advocate within the Internal Revenue Service (IRS).

The IRS issued *Notice 2017-64* on retirement plan contributions for 2018 in October. The employee contribution limit for §§ 401(k), 403(b), most 457 plans, and the federal government’s Thrift Savings Plan will increase from $18,000 to $18,500 in 2018—the first increase since plan year 2015. In addition, income eligibility ranges for the Saver’s Credit and contributions to traditional and Roth Individual Retirement Arrangements will increase in 2018. Highlights are available here.

The IRS issued *Notice 2017-45* on Sept. 1 that extends through 2018 the temporary nondiscrimination relief for closed defined benefit plans provided in *Notice 2014-5*, 2014-2 I.R.B. 276. The remaining provisions of the nondiscrimination regulations under Sec. 401(a)(4) will continue to apply.

**Mortality Tables**

The IRS released updated static mortality tables and final regulations in October to be used for Mortality Tables for Determining Present Value under Defined Benefit Pension Plans. The mortality tables apply for purposes of calculating the funding target and other items for valuation dates occurring during calendar year 2018 and later plan years. The IRS also released *Revenue Procedure 2017-55* for plan sponsors of defined benefit plans to request approval for plan-specific substitute mortality tables. The Academy’s Pension Committee submitted a comment letter to the IRS in March on an update to mortality tables for determining the present value for defined benefit pension plans.

**Multiemployer Plans**

Rep. Richard Neal (D-MA) introduced legislation in November, with companion legislation introduced in the U.S. Senate by Sen. Sherrod Brown (D-OH), which would establish a new Pension Rehabilitation Administration within the U.S. Department of the Treasury and allow struggling multiemployer plans to borrow funds from the Treasury, at low interest rates, for up to thirty years.

**Pension Benefit Guaranty Corporation (PBGC)**

The PBGC announced on Dec. 21 an expansion of its Missing Participants Program to cover terminated 401(k) and other retirement plans through a *final rule*. The expansion will be voluntary and available for DC and small professional services plans that terminate on or after Jan. 1, 2018.
The PBGC released its FY 2016 Projections Report on Aug. 3. According to the report, the financial condition of the single-employer program is projected to improve at a faster rate than previously expected: the FY 2016 deficit of $20.6 billion could be eliminated within the next three to seven years. In contrast, PGBC projects that the multiemployer program will be depleted by the end of FY 2025. The Academy’s Pension Practice Council released an issue brief in June providing an overview of the issues facing the multiemployer pension system.

The agency released its Fiscal Year 2017 Annual Report on Nov. 16. The report shows that the multiemployer program’s deficit rose to $65.1 billion, from $58.8 billion in FY 2016. The single-employer deficit decreased to $10.9 billion, from $20.6 billion in the prior year.

The PBGC’s insurance programs were identified as high-risk in the Feb. 15 GAO “High-Risk Series” report to congressional committees on financially troubled federal programs. The GAO concluded that Congress should consider redesigning PBGC’s single employer premium structure to better align rates with sponsor risk. Other recommendations included enacting reforms to stabilize the multiemployer system, revising the agency’s governance structure, and devising a viable strategy for funding claims. The Academy’s Multiemployer Plans Subcommittee met on Feb. 22 with officials from the U.S. Department of Treasury, the PBGC, and the Department of Labor to discuss how the application process is working for financially troubled multiemployer plans that seek to suspend benefits or partition liabilities, as permitted under the Multiemployer Pension Reform Act of 2014, as well as the criteria for selection of reasonable actuarial assumptions in relation to multiemployer plan solvency.

**Retirement Security and Lifetime Income**

The GAO released a report on Oct. 18 examining the retirement security challenges facing Americans. The report found that Americans face three main retirement security challenges: access to employer-sponsored plans; accumulating sufficient savings; and ensuring that they do not outlive their retirement savings and benefits. The report also identified fiscal risks and benefit adequacy concerns in public and private retirement systems, including Social Security’s projected long-range shortfall; the shift from DB plans to DC plans that places more financial risk on individuals; and insufficient individual savings, which may increase reliance on safety net programs. Finally, the report concluded that Congress should consider establishing an independent commission to “clarify key policy goals for the system and improve how the nation can promote more stable retirement security.”

The Retirement System Assessment and Policy Committee of the Academy published an issue brief in December on the role of U.S. tax policy on overall retirement security. In October the Academy released a report, with the Australian Actuaries Institute and the Institute and Faculty of Actuaries in the United Kingdom, on a survey to analyze retirement readiness in the U.S., U.K., and Australia.

The Academy also announced a public interest position statement in October on lifetime income, voicing support for policy and educational initiatives to increase retirement income options within employer-sponsored DC plans. The position statement identifies several possible strategies to address the challenge of lifetime income within DC plans. These strategies include annuities and “structured withdrawal” programs, among others. In addition, the position
statement emphasizes that new legislation and other regulations are needed to develop solutions and address issues involved with selecting providers, educating employees, and minimizing fiduciary concerns.

**Social Security Solvency**
The 2017 Social Security trustees’ report, released in July, indicated that the Old-Age, Survivors, and Disability Insurance trust funds will face exhaustion in 2034, after which annual revenues only will be sufficient to fund about three-quarters of scheduled benefits. Social Security’s total income is projected to exceed its total cost through 2029; however, the Social Security Disability Insurance trust fund will exhaust its reserves in 2028. The 75-year actuarial deficit for the combined trust funds is estimated at 2.83 percent of taxable payroll, up 2.66 percent from the previous year. The Academy’s Social Security Committee released an issue brief in July that examined the social insurance program’s long-term solvency issues and recommended that Congress act soon to improve the long-term financial outlook of the program.

Social Security disability programs were identified as high-risk in the Feb. 15 GAO “High-Risk Series” report to congressional committees on financially troubled federal programs. The GAO concluded that the Social Security Administration (SSA) could improve both of its disability programs (Disability Insurance and Supplemental Security Income) by helping individuals find appropriate resources and workplace accommodations to help them get back to work. Revising the programs’ goals and updating SSA’s eligibility for benefit criteria also are critical steps toward improved efficiency.

**State-Based Retirement Initiatives**
President Trump signed a bill into law (PL 115-24) on April 13 repealing a rule by the Department of Labor that provided municipalities a safe harbor to facilitate government-sponsored IRAs for private sector employees without access to workplace retirement savings programs. The president signed another bill into law (PL 115-35) on May 17 repealing a similar rule applying to states. The Academy’s Retirement System Assessment and Policy Committee published an issue brief in November on state-based initiatives to expand retirement coverage among workers who do not have access to employer-sponsored plans.

**Risk Management and Financial Reporting Issues**

**Accounting Standards**
The International Accounting Standards Board (IASB) released International Financial Reporting Standard (IFRS) 17 Insurance Contracts on May 18. According to the press release, IFRS 17 will replace the IFRS 4 Insurance Contracts standard for accounting periods from Jan. 1, 2021, and will require all insurers operating in IFRS jurisdictions to use the new accounting standard to eliminate financial reporting inconsistencies. Insurers are free to apply IFRS 17 before 2021 if the insurer applies IFRS 9 Financial Instruments and IFRS 15 Revenue from Contracts with Customers.

**Dodd-Frank**
The U.S. House of Representatives on June 8 passed H.R. 10, the Financial CHOICE (Creating Hope and Opportunity for Investors, Consumers and Entrepreneurs) Act of 2017. The bill is
meant, in part, to repeal (and replace) several key provisions of the Dodd-Frank financial reform law, including:

- Eliminate FIO and create the Office of the Independent Insurance Advocate in the U.S. Department of the Treasury. The advocate would be required to have insurance expertise and be appointed by the president for a six-year term.
- Require the Independent Insurance Advocate to serve on the FSOC and to submit a report at the end of his/her term to select congressional committees with recommendations regarding FSOC and the role of the Independent Insurance Advocate.
- Repeal FSOC’s authority to designate non-bank financial institutions as systemically important financial institutions (SIFIs).
- Authorize the Office of the Independent Insurance Advocate to facilitate federal efforts on international insurance matters, such as representing the U.S. at the International Association of Insurance Supervisors and working with the Secretary of the Treasury to negotiate future covered insurance agreements.
- The advocate also would work with state insurance regulators and help the U.S. Treasury Secretary administer the Terrorism Insurance Program.
- Repeal the Department of Labor’s Fiduciary Rule.


**Federal Insurance Office (FIO)**
A bill to reform the FIO was introduced in the U.S. House of Representatives on Sept. 28 by Reps. Sean Duffy (R-WI) and Denny Heck (D-WA). Under the legislation, FIO’s activities would be limited primarily to international matters. It would be authorized to coordinate federal insurance policy, with the requirement that it achieve consensus with the states before advocating or agreeing to positions in international forums. In addition, FIO’s authority to issue subpoenas and to engage in broad information gathering and reporting obligations would be eliminated.

The legislation would continue FIO’s existing authority to monitor all aspects of the insurance sector. It also would continue the authority of the U.S. Department of the Treasury and the United States Trade Representative to negotiate and enter into covered agreements (although under more limited authority than current law). Administratively, the FIO would be limited to five employees and moved to the Treasury Department’s Office of International Affairs.

**Financial Stability Oversight Council (FSOC)**
The U.S. Department of the Treasury on Nov. 17 issued a report to the president on the designation process of the FSOC for nonbank financial companies and financial market utilities. According to the report, FSOC’s current processes for designating systemically important financial institutions (SIFIs) should be replaced by pursuing an activities-based or industry-wide approach to addressing financial stability risks. When designating nonbank financial companies, the Treasury Department recommended that FSOC:
- Assess the likelihood of a financial company’s financial distress in its analysis;
• Only designate companies if it expects the benefits of financial stability to outweigh the costs of designation;
• Enhance communications with companies being reviewed and their primary financial regulators;
• Provide a clear “off-ramp” for nonbank financial companies that have been designated; and
• Increase transparency in annual reevaluations of designated companies.

The president signed into law on Sept. 27 the Financial Stability Oversight Council Insurance Member Continuity Act (PL 115-61). Under the law, the FSOC’s independent insurance member is able to continue to serve until the earlier of two dates: 18 months after the date on which the term of service ends or until a successor has been appointed and confirmed. President Trump has subsequently nominated a new candidate to take this position, but the Senate to date has not acted on that nomination. The Academy’s Financial Regulatory Task Force sent a letter to the Senate Committee on Banking, Housing, and Urban Affairs indicating support for modifying the term of the independent insurance member. A similar letter was sent to the House Committee on Financial Services in July.

The FSOC released its 2017 Annual Report on Dec. 14. The report emphasized that addressing regulatory burdens should be a major focus of the council and advised FSOC to “continue to address regulatory overlap and duplication, modernize outdated regulations, and, where authority exists, tailor regulations based on the size and complexity of financial institutions.” Other highlights of the report included:
• A recommendation that state insurance commissioners and the NAIC continue working to strengthen controls on life insurers’ use of captive reinsurance transactions, as well as the transparency of such transactions;
• Support for efforts by pension regulators and accounting standards boards to improve the quality of pension financial statements;
• Support for the use of market valuation for pension data as described in guidance issued by the Governmental Accounting Standards Board; and
• Support for the creation of a private sector council to collaborate with regulators and focus on cybersecurity threats to businesses.

Insurance Industry
The U.S. Department of the Treasury released a report on the asset management and insurance industries on Oct. 26 in accordance with an Executive Order on “Core Principles for Regulating the United States Financial System.” The report reviewed the regulatory framework of both industries, with a focus on evaluating systemic risk, ensuring effective regulation and government processes, international engagement, and promoting economic growth. In addition, the report made a number of recommendations, including:
• Restructuring the FIO and increasing its coordination with state insurance regulators;
• Adopting uniform state data security standards based on the NAIC’s Insurance Data Security Model Law;
• Delaying the implementation of the Department of Labor’s fiduciary rule;
• Allowing annuities as investment options for employer-sponsored retirement plans; and
Creating a federal task force to focus on regulation of long-term care insurance.

**International Association of Insurance Supervisors (IAIS)**
The IAIS on Nov. 2 announced a “unified path to convergence” on Insurance Capital Standards (ICS) Version 2.0. The implementation of ICS Version 2.0 will begin with a five-year monitoring phase followed by an implementation phase, and will entail mandatory confidential reporting by internationally active insurance groups “of a reference ICS which is based on market-adjusted valuation (MAV),” as well as additional reporting by group-wide supervisors “of ICS based on [generally accepted accounting principles] GAAP Plus valuation and/or an internal model-based capital requirement calculation.”

The IAIS and the International Actuarial Association (IAA) announced a five-year agreement “to enhance the actuarial skills of supervisory authorities” on Nov. 1. The agreement was signed by the IAIS, the IAA, and the Access to Insurance Initiative (an implementation partner of the IAIS on access to insurance) in Kuala Lumpur, Malaysia, during the IAIS 2017 Annual Conference. The announcement noted the importance of actuarial skills “in such matters as determining and managing policy liabilities, setting appropriate premiums and managing capital requirements. This skill set provides support for enterprise-wide risk management in financial services and more widely for long-term policyholder protection.”

**Office of Financial Research (OFR)**
The OFR in December published its 2017 Annual Report to Congress describing key research findings and priorities for 2018 and beyond. The report assesses potential threats to U.S. financial stability and provides an update on the status of the agency’s efforts to support the FSOC and agencies represented by council members. The report describes the current level of overall financial risk as “moderate,” which is unchanged from last year.

As a supplement to its annual report, the OFR also published the 2017 Financial Stability Report, which analyzes in greater detail the three key threats (vulnerabilities to cybersecurity incidents, resolution risks at SIFIs, and evolving market structure) to financial stability identified by the agency. Examples of the threats included in the Financial Stability Report are:

- The continued concern of cybersecurity threats to insurers. The report cites the adoption by the NAIC of a cybersecurity model law as an important step forward, but notes that the law still awaits adoption by U.S. states.
- The absence of well-developed resolution tools for systemic nonbank financial firms, including insurance companies.

**Public Company Accounting Oversight Board (PCAOB)**
The PCAOB on June 1 adopted a new standard, AS 3101, The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion, designed to provide users of financial statements with more information about an audit and the auditor’s findings. According to a fact sheet released by the PCAOB, the final standard:

- Applies to all audits conducted under PCAOB standards.
- Requires auditors to identify critical audit matters (CAMs) from the current period’s audit of the financial statements or state that there were no CAMs identified.
- Retains the pass/fail opinion of the existing auditor’s report, but makes changes to the actual report to clarify the auditor’s role, including the addition of statements regarding the
auditor’s tenure with the company and independence, as well as ensuring a standardized form for the report.

In the announcement, PCAOB indicated it will gradually phase in the new requirements. Provisions that are unrelated to critical audit matters will take effect for audits for fiscal years ending on or after Dec. 15, 2017. Provisions related to critical audit matters will go into effect on or after June 30, 2019, for large accelerated filers. Provisions for all other companies will take effect for fiscal years ending on or after Dec. 15, 2020.

Reinsurance
The U.S. Department of the Treasury and the Office of the U.S. Trade Representative on Sept. 22 signed the Bilateral Agreement between the United States Of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance (known as the “covered agreement”) with the European Union (EU) after announcing their intention to sign on July 14. The United States and the EU introduced the covered agreement on insurance and reinsurance measures in January (a fact sheet on the agreement is available here). According to a joint statement by the U.S. and EU, “[t]he Agreement covers three areas of prudential insurance oversight: reinsurance; group supervision; and the exchange of insurance information between supervisors.”

If you have any questions regarding this Academy Alert, please contact Bill Rapp, assistant director of public policy (rapp@actuary.org; 202-785-6929).

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