

COVID-19 NEWS OF INTEREST

NAIC Guidance and Statutory Accounting Interpretations Related to COVID-19

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In recent weeks, state insurance regulators have taken actions to protect policyholders experiencing financial hardship as a result of the COVID-19 pandemic by requiring or recommending moratoriums on policy cancellations or non-renewals and extending grace periods for premium payments. Such actions affect the age of insurers' outstanding premium receivables and certain other collections and have raised insurance company concerns regarding the impact to statutory financial statements. New York's recent emergency actions illustrate the regulatory changes affecting life, health and property/casualty insurance policies in this regard as we recently reported [here](#). Insurers' statutory financial statements and admitted assets may also be affected by recent guidance issued by federal and state prudential banking regulators and the Financial Condition (E) Committee of the National Association of Insurance Commissioners ("[NAIC](#)") encouraging financial institutions to make loan modifications for borrowers who cannot meet their loan repayment obligations. Intended to provide financial relief to consumers, these accommodations and loan modifications have ripple effects on the statutory admitted assets and surplus of insurers by, for example, delaying their ability to collect insurance premiums or principal and interest payments under loans. Historically, in the wake of natural catastrophes, the NAIC has issued interpretations ("[INT](#)") of the accounting rules applicable to insurers—Statements of Statutory Accounting Principles ("[SSAPs](#)")—in order to relax certain accounting rules for a limited period. Whereas past events have represented regional catastrophes, the NAIC has acknowledged that the current pandemic presents a "nationally significant event" requiring more extensive accommodations.

As discussed below, the NAIC has issued INTs of limited duration to mitigate insurance company concerns on the impact to statutory financial statements and is monitoring issues related to insurer solvency as a result of the COVID-19 pandemic.

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SSAP Interpretations Related to COVID-19 Adopted by the Statutory Accounting Principles (E) Working Group

To address the effects of policyholder accommodations and bank and mortgage loan modifications on insurers' admitted assets and surplus, on April 15, 2020 the NAIC's Statutory Accounting Principles (E) Working Group (the "Working Group") adopted three pieces of interpretive guidance that relate to COVID-19 and temporarily modify the accounting rules set forth in several SSAPs as set forth in the NAIC's Accounting Practices and Procedures Manual. On April 15, upon adoption by the Working Group, the three INTs related to COVID-19 became effective as temporary modifications of the relevant statutory accounting rules. We note that, in theory, the NAIC Accounting Practices and Procedures Task Force has the power to overturn, amend or defer interpretations adopted by the Working Group. That said, in light of the state insurance regulators' common goals of addressing the issues stemming from the COVID-19 pandemic, it would appear very unlikely that the interpretations adopted by the Working Group on April 15, 2020 will be overturned.

The key provisions of the three SSAP interpretations related to COVID-19 adopted by the Working Group are as follows:

- **Extension of Ninety-Day Rule for the Impact of COVID-19 (INT 20-02).** Statutory accounting rules generally provide that insurance premiums receivable by an insurance company that are 90 days past their due date will be deemed a non-admitted asset on the insurance company's balance sheet. INT 20-02 temporarily extends this so-called "90-day rule" by allowing the following receivables to continue to be counted as admitted assets even if they are more than 90 days past due: (i) premiums receivable from policyholders or agents, (ii) uncollected uninsured plan receivables (excluding Medicare and similar government plans), (iii) life premium due and uncollected, and (iv) amounts due from policyholders for high-deductible policies. This extension temporarily suspends non-admission guidance in SSAP No. 6, para. 9, SSAP No. 47, para. 10.a, SSAP No. 51R, para. 12 and SSAP No. 65, para. 37, respectively. The extension covers only policies and receivables that were current as of March 13, 2020 (which was the date on which the U.S. federal government declared a state of emergency) and policies written or renewed after March 13, 2020. Consequently, the extension of the "90-day rule" does not apply to policies and receivables that were not current as of March 13, 2020. We note that the inclusion of uncollected uninsured plan receivables as addressed in SSAP No. 47 and life premium due and uncollected as addressed in SSAP No. 51R was added, along with other clarifying language, in response to interested party comments received during a one-week comment period.

This interpretation is applicable only to quarterly statutory financial statements as of March 31, 2020 and June 30, 2020, and will automatically be nullified on September 29, 2020. INT 20-02 does, however, state that the Working Group will subsequently review this interpretation to determine whether a further extension of this guidance is needed. The Working Group's hearing agenda for the April 15, 2020 meeting during which INT 20-02 was adopted states that the Working Group intends to assess in August 2020 whether this extension is needed.

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- **Troubled Debt Restructuring Due to COVID-19 (INT 20-03).** INT 20-03 affects SSAP No. 36, which provides guidance for determining whether a debt restructuring is considered a troubled debt restructuring (“TDR”) and for related accounting and disclosure practices. INT 20-03 provides that in assessing whether a financial institution’s modification of a mortgage loan or bank loan for a borrower must be reported as a TDR within SSAP No. 36, such determination should adhere to the provisions and process detailed in Section 4013 of the *Coronavirus Aid, Relief and Economic Security Act* (the “CARES Act”), which President Trump signed into law on March 27, 2020, and in the subsequent joint statement issued on April 7, 2020 by certain federal regulators in consultation with state financial regulators (the “April 7 Joint Statement”). Importantly, in response to comments from the industry, the Working Group expanded the scope of INT 20-03 to include not only mortgage loans, but also bank loans.

Consistent with Section 4013 of the CARES Act and the April 7 Joint Statement, INT 20-03 is applicable only for the term of a loan modification, which must be for a loan that was not more than 30 days past due as of December 31, 2019. INT 20-03 applies for the period beginning on March 1, 2020 and ending on the earlier of December 31, 2020 or 60 days after the date on which the COVID-19 national emergency ends. The Working Group will subsequently review INT 20-03 to determine whether an extension is needed.

- **Mortgage Loan Impairment Assessment Due to COVID-19 (INT 20-04).** In response to bank and mortgage loan forbearance or modifications granted in response to COVID-19 only, INT 20-04 provides a temporary exception for assessing impairment with respect to mortgage loan forbearance or modifications granted in response to the COVID-19 pandemic. INT 20-04 provides that, for modification programs designed to provide temporary relief for borrowers current as of December 31, 2019, the insurer may presume that the borrower is current on payments and not experiencing financial difficulties at the time of the modification for purposes of determining impairment status. Specifically:
 - For bonds within the scope of SSAP No. 26R and mortgage loans within the scope of SSAP No. 37, exceptions are provided for assessing impairment under SSAP No. 26, para. 13 and SSAP No. 37, para. 16, respectively, for payments (either principal or interest) that have short-term deferrals or modifications resulting from COVID-19. Impairment assessments for reasons other than the short-term deferral or modification of interest or principal payments in response to COVID-19 are not impacted by INT 20-04. In addition, INT 20-04 has no impact on the recognition of realized losses if the insurer believes that the bank or mortgage loan is “other than temporarily impaired” (“OTTI”).
 - For funds registered with the Securities and Exchange Commission that have underlying mortgage loans within the scope of SSAP No. 30R, loan-backed and structured securities with underlying mortgage loans within the scope of SSAP No. 43R, and joint ventures, partnerships and limited liability companies with underlying investments in mortgage loans within the scope of SSAP No. 48, exceptions are provided for assessing OTTI under SSAP No. 30, para. 10 and INT 06-07, SSAP No. 43R, paras. 30–36, and SSAP

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No. 48, respectively, due to fair value declines in such investments as a result of deferrals or modifications in response to COVID-19. These exceptions do not apply if the insurer intends to sell the security. With respect to funds within the scope of SSAP No. 30R, declines in fair value are to continue being reported as unrealized losses. With respect to joint ventures, partnerships and limited liability companies within the scope of SSAP No. 48, an OTTI is required to be assessed if factors other than the mortgage loan forbearance or modification have resulted in a decline that is considered other than temporary or if the insurer does not believe it is probable that the carrying amount of the investment will be collected.

In response to comments, the final INT 20-04 does include an explanation that subsequent to modifications or restructurings that impact original contractual terms of items within the scope of INT 20-04, future impairment assessments must be based on the modified terms. Other revisions in response to interested party comments included revisions to include bank loans within the scope of SSAP No. 26R and other clarifying language.

This interpretation is applicable only to quarterly statutory financial statements as of March 31, 2020 and June 30, 2020, and will automatically be nullified on September 29, 2020. INT 20-04 does, however, memorialize that the Working Group will subsequently review this interpretation to determine whether a further extension of this guidance is needed. The Working Group's hearing agenda for the April 15, 2020 meeting during which INT 20-04 was adopted states that the Working Group intends to assess whether this extension is needed in August 2020.

In response to interested party comments related to both INT 20-03 and INT 20-04, NAIC staff also recommended that the Working Group and NAIC staff consider a possible additional interpretation of SSAP No. 34, relating to investment income due and accrued. We will continue to monitor and report on further SSAP interpretations and accounting accommodations.

Other NAIC Guidance Related to Insurer Solvency

The Working Group's adoption of these interpretations follows [earlier guidance](#) from the NAIC's Financial Condition (E) Committee, which oversees the NAIC's task forces and working groups that focus on insurer solvency-related issues. To encourage insurers to work with borrowers facing financial difficulties due to COVID-19, this guidance provides relief from certain risk-based capital ("RBC") rules and statutory accounting requirements for TDRs. Specifically, the guidance instructs that for purposes of RBC calculations as of March 31, 2020 and June 30, 2020, if an insurer allows, or is mandated by a governmental authority to permit, delayed principal or interest payments for direct mortgages and Schedule BA mortgages as a result of the COVID-19 pandemic, the mortgages do not need to be reclassified to a different RBC category from the category utilized in the insurer's RBC filing as of December 31, 2019 (which otherwise may have required a higher capital charge for these mortgages). In addition, the guidance provides that where residential mortgage-backed securities (RMBS) and commercial mortgage-backed securities (CMBS) were modeled by the NAIC

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Securities Valuation Office for year-end 2019, and where any principal and interest payments have been deferred as a result of the COVID-19 pandemic, these securities are not required to receive an updated NAIC Designation in statutory quarterly financial statements and RBC calculations of the insurer as of March 31, 2020 and June 30, 2020 as a result of such payment deferral. This guidance specifically applies to a troubled debt restructuring issued as a result of COVID-19, for the term of a loan modification that occurs during the applicable reporting period, and for a loan that was not more than 30 days past due as of December 31, 2019, and does not supersede the requirements or authority of any states.

Also related to the possible ripple effects of the policyholder relief on insurance companies, last month the NAIC issued a [statement](#) that it would caution against and oppose legislative proposals to require insurers to retroactively pay COVID-19 business interruption claims not covered by insurance policies. The statement explained that although “the U.S. insurance sector remains strong,” legislative requirements like this “would create substantial solvency risks for the sector, significantly undermine the ability of insurers to pay other types of claims, and potentially exacerbate the negative financial and economic impacts the country is currently experiencing.” The NAIC offered to work with the U.S. Congress on solutions to address the policy challenges of future pandemics, and, together with state insurance regulators, is “closely monitoring the financial health of insurers to ensure their continued strength and resilience.”

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