

For Now, OFC Legislation Keeps P/C Guaranty Fund System Intact

By Roger H. Schmelzer

Sometimes the “buzz” on an issue can be gauged by the number of media clips about it that come through the NCIGF offices.

There is major ink being spilled editorializing about currently proposed Optional Federal Charter legislation. In one day alone, the NCIGF office received more than 25 clips from industry publications and mainstream news outlets about the issue. In the past month, it seems virtually every writer in the industry has examined, analyzed and vetted every conceivable facet and angle about the OFC.

The jury is still out on the fate of the bill introduced in the U.S. Senate by Senators Tim Johnson (D-SD) and John Sununu (R-NH) May 24. The NCIGF takes no position on OFC legislation. Our focus – and that of our members – is to deliver on our mission: to step into the shoes of a failed insurance company to pay property and casualty claims. This is our role as currently defined by state law. As introduced, the Johnson-Sununu bill would leave those responsibilities mostly untouched.

Of course, legislation as introduced usually has no relation to legislation as enacted. Inevitable political tradeoffs have a way of changing things, sometimes drastically. While I do not anticipate that the guaranty fund system will be the most important element of the bill to be discussed, it will receive its share of attention.

As lawmakers consider OFC or any other proposal that could call for a federalized guaranty fund system, we urge caution in deliberation. After all, for nearly 40 years the system has delivered on its statutory mandate, paying claims that otherwise would have gone unpaid due to insolvency. The system works well on behalf of consumers and would quite simply be a bear for a federal agency to manage.

Indeed, unlike many of the alternatives that some are eager to float, the guaranty fund system has a proven track record. And we believe that the state-run system is working well, providing, as it does, important insurance consumer protection.

Here’s a statement I’d like to see in the news clips that have been coming in: *The GF system is financially healthy; it has and is able to step in for failed insurers to pay policyholder claims at state law-defined allowable limits, therefore Members of Congress are reluctant to disrupt it.*

The Johnson-Sununu bill calls for the National Insurance Guaranty Corporation to step in when a state guaranty fund has not met the standards established by the federal legislation.

Presently each state legislature creates guaranty association rules for its own state. This OFC bill proposes a set of minimum qualification standards which state guaranty

associations must satisfy to be classified as qualified and be allowed to protect consumers of both national and state insurers doing business in their state. As currently drafted in the National Insurance Act of 2007, the qualification standards closely track the NCIGF's own model guaranty fund law, which many of our member guaranty association's state legislatures have now adopted.

It's important to note, an absence of uniform standards in the past has not prevented the system from working effectively. Insurance, including guaranty funds, has long been regulated by state statute; this means there is variation in law from state-to-state. This has given the states flexibility to craft laws that address their individual needs and reflect their specific circumstances. But this variation does not suggest that guaranty fund laws in any way are deficient. If anything, this variation makes the guaranty funds better able to protect policyholders in the states they serve.

In its current form, the proposed OFC legislation would give states four years to amend the state laws to meet federal standards. That's what most, if not all, of the states would do if OFC legislation passes. Most guaranty funds already meet many of the proposed qualification requirements. If the current proposal were enacted, minor changes to state laws would be required to allow national insurers to become members of the state guaranty association. It will only be in rare instances that some funds will have to make further changes to their guaranty fund laws to meet the qualification standards and be considered a qualifying guaranty fund, or they will choose not to provide the guaranty fund mechanism for claims of national insurers, in which case the national corporation would take over all guaranty fund functions in the state.

The state-based property/casualty guaranty fund system can live with the Johnson/Sununu proposal, but that is not necessarily the end of the story; the legislative process is long, convoluted and unpredictable.

There will be a bill introduced in the U.S. House of Representatives that could have different provisions. Assuming the proposal gains momentum, there will be committee hearings in both chambers where changes can be made and potential amendments on the floor if the bill were to get that far. Finally, should the bill pass both houses, there will likely be a conference committee where the real dealing will take place.

The guaranty fund community should be pleased with where we stand, but should not take undue comfort from what is essentially a first draft that gets it right. Insurance regulation is not the hottest topic in Washington, but it is one cataclysmic natural disaster or huge insolvency away from becoming one. Additionally, proponents of an OFC are spending millions of dollars and thousands of human resource hours on getting this bill passed. Things could change dramatically for stakeholders affected by the bill, including the guaranty fund system.

For that reason, we must continue to concentrate on making the existing system work as well as we can. We need to focus on communicating the message of success and improving collaboration with our insolvency partners to underscore the value of the

system to consumers. We must use this period to establish the innate strength of the guaranty fund system so that members of congress will be satisfied that it is in place rather than motivated to “fix” it.