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## TRANSMITTAL MEMORANDUM

**TO:** Interstate Insurance Product Regulation Commission

**FROM:** Governance Committee

**DATE:** April 12, 2022

**SUBJECT:** Recommended Position Statement on Congressional Consent

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The Governance Committee of the Interstate Insurance Product Regulation Commission (“Commission”) is charged with managing the implementation of the Commission’s strategic plan, including implementation of the recommendations from the independent governance review performed in 2020. In carrying out this charge, the Governance Committee has finalized a position statement that the Interstate Insurance Product Regulation Compact (“Compact”) received implied consent of Congress through federal law in 2006 (“Position Statement 1-2022”) and is recommending the Commission publish Position Statement 1-2022 for notice, comment, discussion, and consideration for adoption at a future meeting.

### Background

In April 2020, the Colorado Supreme Court issued a ruling that without congressional consent, the legislature could not delegate to an interstate agency the power to adopt a standard that conflicted with a state statute. The underlying matter, *Amica Life Insurance Co. v. Wertz*, originated in litigation from 2015 involving life insurance policy proceeds that differed under the Uniform Standards’ two-year suicide exclusion provision and Colorado’s one-year suicide exclusion statute. Both the NAIC and Commission provided amicus or friend of the court briefs to provide background on the reasons for and nature of the Compact.

Later in 2020, the Commission engaged the outside law firm of Squire Patton Boggs to conduct an independent governance review to carry out an action item in the Compact’s three-year strategic plan. In the governance review, Squire Patton Boggs analyzed the Colorado ruling in light of established compact case law and found the Commission had a compelling case that it received implied congressional consent in 2006 when a federal law was enacted authorizing the District of Columbia to join this Compact and delegate the powers under the Compact to the Commission. The recommendation was for the Commission to develop and adopt an advisory opinion recognizing Congress gave it congressional consent before the Compact was operational.

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## **Committee Work**

In 2021, the Governance Committee considered the outside counsel analysis, conducted additional analysis and developed a draft document recognizing that Congress provided its consent in a 2006 law, as viewed through well-established criteria and precedent in the law of interstate compacts. In third quarter 2021, the draft was shared with the Commissioners in the Compacting States in one-on-one conversations. These conversations resulted in revisions to the draft and improvement to the supporting material.

In December, the Governance Committee reported to the Commission it was taking additional steps at the recommendation of the Legislative Committee. The draft was reviewed by Squire Patton Boggs for consistency with its recommendation from the independent governance review to recognize the Commission received implied congressional consent.

Squire Patton Boggs recommended improvements and provided additional perspective. The Governance Committee addressed the new recommendations in the draft being recommended. The Committee also changed the title of the Commission's finding of implied congressional consent from an advisory opinion to a position statement, to reflect that the Commission is fully authorized to conclude the Compact received implied congressional consent.

To provide more background on the nature of and reasons supporting the recommended Position Statement 1-2022, the Governance Committee has prepared briefing points and frequently asked questions. This material is also accompanied by the opinion letter of Squire Patton Boggs.