

# nolhga journal

A Publication of the National Organization of Life and Health Insurance Guaranty Associations

## Summer in San Francisco

NOLHGA returns to one of our favorite cities for the 2011 Legal Seminar

America has long had a love affair with San Francisco and the Bay Area. Artists such as Tony Bennett, Woody Guthrie, Otis Redding, Journey, John Lee Hooker, and Death Cab for Cutie have sung songs about the city or its surroundings; Mark Twain wrote at length about the city (though the quotation famously attributed to him might be apocryphal); and events as disparate as the Gold Rush and the Internet “tech boom” of the 1990s have drawn people west for hundreds of years.

NOLHGA and its members are clearly not immune to the charms of city, which explains why the annual Legal Seminar will return to San Francisco in 2011. Previous



seminars in the city have been among the most popular in our history, and this year’s meeting promises to be no exception.

### Putting on the Ritz

The seminar will be held on July 21 and 22 at the Ritz-Carlton, San Francisco, which sits atop Nob Hill, just blocks from Union Square, Fisherman’s Wharf, and other attractions. The quality of the host hotel will be matched by the quality of the seminar program (see “Program Highlights”), which will address topics such as:

- Coordination among regulators, receivers, and guaranty associations
- Financial Stability Oversight Council, Federal Insurance Office, and other

*[“San Francisco...” continues on page 7]*

## Seminar at a Glance

**When:** July 21 & 22, 2011

(an MPC meeting will be held July 19 & 20)

**Where:** Ritz-Carlton, San Francisco

Reservations: 800.241.3333 or online at [www.nolhga.com/2011LegalSeminar.cfm](http://www.nolhga.com/2011LegalSeminar.cfm)

Room Rate: \$239/night plus tax (The NOLHGA rate is available to registrants three days before and after the meeting, so long as rooms are available.)

### Registration

\$725 for attendees (includes all events)

\$75 for guests wishing to attend the Luncheon on July 21

\$50 for guests wishing to attend the Welcome Reception on July 20

Register online at [www.nolhga.com/2011LegalSeminar.cfm](http://www.nolhga.com/2011LegalSeminar.cfm)



### Welcome Reception

There will be a Welcome Reception on the evening of Wednesday, July 20, at the Ritz-Carlton.

### World Champions

The San Francisco Giants have a three-game series with the Los Angeles Dodgers on July 18–20 (good luck getting tickets). They start a series with the Milwaukee Brewers on July 22. The Oakland A’s are out of town.

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## The Financial Crisis Goes to the Movies

**O**n an episode of his late 1970s public television series, humorist and social commentator Jean Shepherd once jokingly stated that he had joined the “Watergate Book-of-the-Month Club”—there were that many books about the Watergate scandal then being published. For some time now, the same has been true of the financial crisis that began in 2007. In fact, regarding that crisis, there probably have been more than enough books to support a “book-of-the-week club.” As I have noted before in this column, some of those books have been quite good and informative.

In American culture, though, an event hasn't really registered until it has been the subject of a movie. Over the Memorial Day weekend, I had the chance to watch two recent films about the financial crisis: *Inside Job* and *Too Big to Fail*. The former is available on pay-per-view services, while the latter is now being shown frequently on HBO and is available at the HBO Web site. Because so many more people now watch films than read books, these movies (and others that may follow them) likely will affect how the financial crisis is popularly perceived.

The first film, *Inside Job*, won the Academy Award for best documentary film of 2010. *Inside Job* is a technically impressive work. The aerial photography of Manhattan is stunning, and the film is well-paced and crisply edited. Viewers who enjoyed *An Inconvenient Truth* and most of the recent work of filmmaker Michael Moore are likely to esteem it as highly as the Academy did.

Although the narrative is sometimes garbled and the film's grasp of financial details is imperfect (e.g., the narrator at

times appears not to understand the differences among asset-backed securities, collateralized debt obligations, and derivatives), on the whole, *Inside Job* transmits a coherent conclusion quite effectively. That conclusion is that the crisis was caused by the greed of those who control the U.S. financial system and who (in the filmmakers' view) succeeded in corrupting the regulatory system and academia. The film further asserts that recent financial regulatory reforms will do little or nothing to prevent future crises, and that the “malefactors of great wealth” have not been held sufficiently responsible for their misdeeds.

*Inside Job* might have been more persuasive had it at least considered, among other matters, the potential role in the crisis of government measures to promote full employment and affordable housing and of government-sponsored entities like Fannie Mae and Freddie Mac; the choices and demands of consumers; the role of loose monetary policy; and the fact that some of the biggest financial losers from the crisis were the very executives accused in the film of financial piracy. That said, the respect for the film in the entertainment industry is nearly universal.

*Too Big to Fail*, by contrast, is a dramatization that does not purport to be a documentary, although it ends up working pretty well on that level. Based upon (and faithful to) the outstanding book by *New York Times* writer Andrew Ross Sorkin, *TB2F* presents the actions, circumstances, and choices of the leaders in government and on Wall Street in the darkest days of the crisis from the Spring of 2008 through the end of that year. The film centers most closely on a series of decisions confronting the trio of then-Treasury Secretary Henry Paulson, Federal Reserve Chair Ben Bernanke, and then-New York Federal Reserve Bank President Timothy Geithner.

Nothing in *TB2F* will come as a surprise to those who followed the crisis and the ensuing investigations and literature. Still, the film genuinely captures the factual essence of those dark months, as well as the pervasive (if late-dawning) fears of insiders about how close we all came to a nearly unimaginable financial catastrophe.

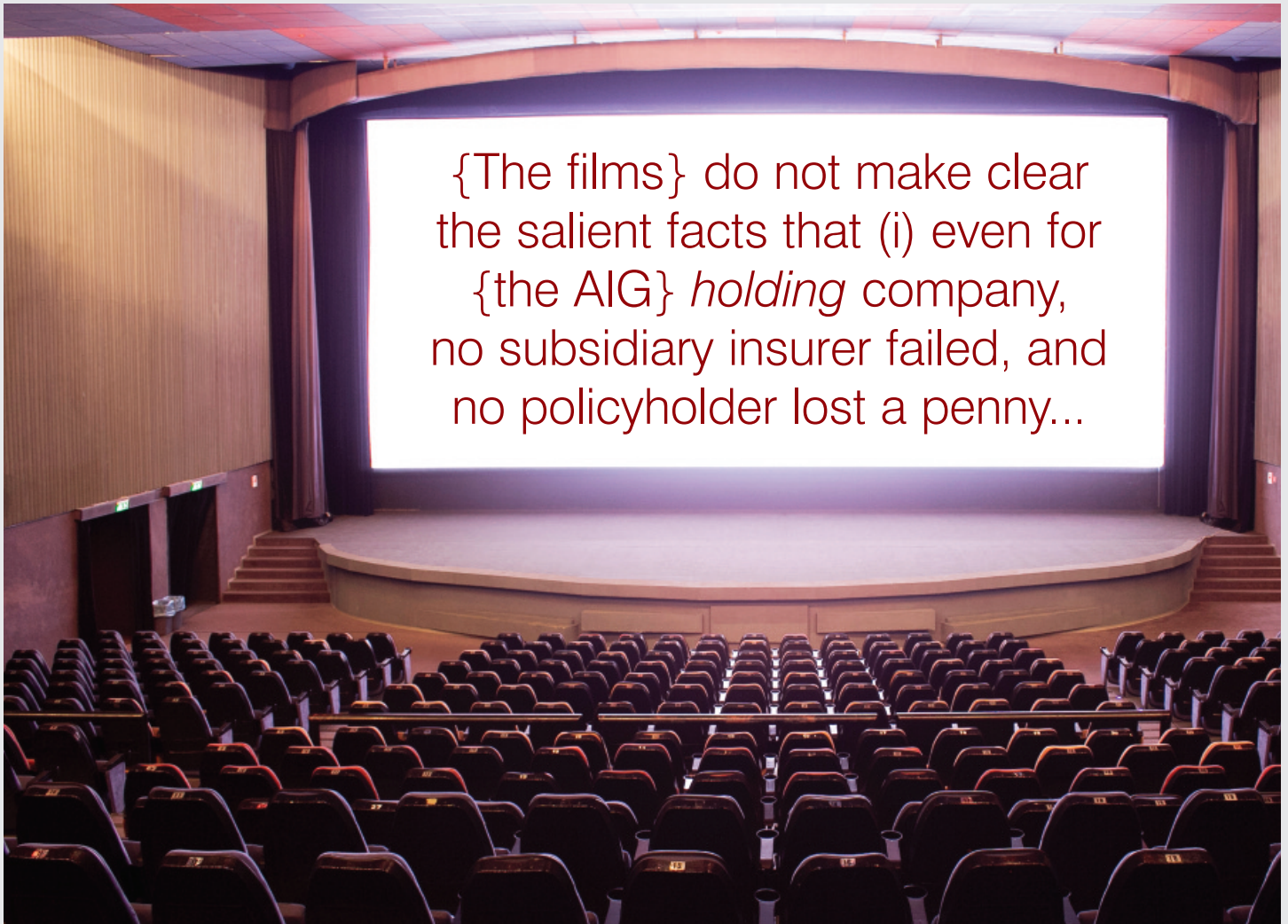
Comparison of the two films can only go so far, since they really attempt to tell two different stories. *Inside Job* is a story about not only perceived greed, but also the failure of the regulatory system to foresee, prevent, or provide for a systemic financial collapse like what recently (almost) developed. *TB2F* is about how the key actors in fact tried, sometimes failed, and ultimately succeeded (at least to a degree) in warding off the most disastrous possible outcomes of the crisis.

Though the films thus are quite different, they share a common narrative that, due (among other things) to the con-

### Sad News

The Memorial Day weekend also brought the sad news of the untimely passing of Gary A. Hernandez, partner in the insurance practice at the international law firm SNR Denton. We at NOLHGA benefited over the years from Gary's wise and patient counsel.

Along with many others, we will miss our good friend. I had the pleasure of working extensively with Gary for the past 20 years, going back to the early days we each spent in the regulatory arena. Our thoughts and prayers go out to his wife Teri, his colleagues at SNR Denton, and all those to whom he meant so much.



{The films} do not make clear the salient facts that (i) even for {the AIG} *holding* company, no subsidiary insurer failed, and no policyholder lost a penny...

straints of running time, is rather truncated. But though the factual recitations in the two films are abbreviated, those may be the key elements that are “takeaways” for viewers.

As far as they purport to present and summarize facts, both films are generally reliable, though not completely fair to the insurance industry. Both films do present decent chronologies of the development of the housing “bubble” and the resulting inventories of questionable mortgage loans; of the rise of loan securitization and pooled securitizations; of the role of credit derivatives in the financial markets; of the role of the rating agencies; of the risks inherent in highly leveraged financial institutions; and of the risks of compensation schemes geared to short-term production at the expense of longer-term risks.

Unfortunately, like most media reports throughout the crisis, the few references to insurance almost entirely involve the collapse of “the world’s largest insurer” and do not make clear the salient facts that (i) even for that *holding* company, no sub-

sidary insurer failed, and no policyholder lost a penny; (ii) the problems of that holding company arose in non-regulated subsidiaries separate from the regulated insurance subsidiaries; and (iii) the insurance industry generally—and almost alone in the financial services sector—survived the financial crisis virtually unscathed.

Consequently, it remains the burden of the insurance sector to make sure that the real facts about the insurance business and the financial crisis are accurately conveyed. Much misinformation on that score unfortunately still abounds and risks polluting the further development of sound public policy. Addressing that misinformation is a topic that will be revisited here soon. ★

*Peter G. Gallanis is President of NOLHGA.*

# You Can't Tell the Players Without a Scorecard

New insurance commissioners and members of Congress will affect the insurance industry—and the guaranty associations—on both the state and federal levels

*By Meg Melusen*

The 2010 elections ushered in a new political landscape, in state capitals and the Nation's Capital. More than half the states now have new governor, and nearly as many have new insurance commissioners. In Congress, Republicans claimed majority status in the U.S. House of Representatives and significantly narrowed their deficit in the Senate as well.

While it's impossible to predict what these changes will mean for the insurance industry and guaranty system, the presence of so many new faces means that it's a whole new ballgame when it comes to working with the NAIC and the insurance-related committees in Congress. And in any game, it helps to know the players.

## **Meet the Commissioners**

The mid-term elections held in 37 states on November 2, 2010, ushered in 29 new governors, and as anticipated, the sea change in state leadership generated considerable turnover among state insurance regulators. Although some of the changes occurred before the elections, nearly half of the



## Scorecard 1: New Insurance Commissioners

State	Insurance Commissioner	State	Insurance Commissioner
Alabama	Jim L. Ridling	Montana	Monica J. Lindeen*
Alaska	Linda S. Hall	Nebraska	Bruce R. Ramge
Arizona	Christina Urias	Nevada	Brett J. Barratt
Arkansas	Jay Bradford	New Hampshire	Roger A. Sevigny
California	Dave Jones*	New Jersey	Thomas B. Considine
Colorado	John J. Postolowski	New Mexico	John G. Franchini
Connecticut	Thomas B. Leonardi	New York	James J. Wrynn
Delaware	Karen Weldin Stewart*	North Carolina	Wayne Goodwin*
DC	William P. White	North Dakota	Adam Hamm*
Florida	Kevin M. McCarty	Ohio	Mary Taylor
Georgia	Ralph T. Hudgens*	Oklahoma	John D. Doak*
Hawaii	Gordon I. Ito	Oregon	Teresa D. Miller
Idaho	William W. Deal	Pennsylvania	Michael F. Considine
Illinois	Jack Messmore	Puerto Rico	Ramón Cruz-Colón
Indiana	Stephen W. Robertson	Rhode Island	Joseph Torti, III
Iowa	Susan E. Voss	South Carolina	David Black
Kansas	Sandy Praeger*	South Dakota	Merle D. Scheiber
Kentucky	Sharon P. Clark	Tennessee	Julie Mix McPeak
Louisiana	James J. Donelon*	Texas	Mike Geeslin
Maine	TBD <sup>1</sup>	Utah	Neal T. Gooch
Maryland	Elizabeth "Beth" Sammis	Vermont	Steve Kimbell
Massachusetts	Joseph G. Murphy	Virginia	Jacqueline K. Cunningham
Michigan	R. Kevin Clinton	Washington	Mike Kreidler*
Minnesota	Mike Rothman	West Virginia	Jane L. Cline
Mississippi	Mike Chaney*	Wisconsin	Ted Nickel
Missouri	John M. Huff	Wyoming	Ken Vines

\* In 11 states, the position is elected rather than appointed by the Governor

 = New members

<sup>1</sup> Mila Kofman, who served as the Superintendent of Insurance in Maine since March 2008, resigned her position effective May 31, 2011; her replacement has not yet been appointed as of this printing.

nation's insurance commissioners have held office less than 12 months.

### New Lineups in Congress

In addition to changes at the state level, the November elections also brought monumental changes in Congress, increasing the number of Senate Republican seats by five and House Republican seats by 63 (the largest increase in the House for either party since 1948). For the insurance industry, changes to the Senate Banking Committee

and House Financial Services Committee are of particular interest, as they oversee the implementation of the 2010 Dodd-Frank Wall Street Reform Act.

The House Financial Services Committee has "jurisdiction over all issues pertaining to the economy, the banking system, housing, insurance, and securities and exchanges." In its Oversight Plan for the 112<sup>th</sup> Congress, the committee identifies the Financial Stability Oversight Council (FSOC) and the Office of Financial Research (OFR) among its specific Dodd-Frank oversight matters.

For the 112<sup>th</sup> Congress, the committee roster has 34 Republicans and 27 Democrats (as compared to 42 Democrats and 29 Republicans last year). There are 15 new Republican members; 1 new Democratic member; and a new Chairman: Congressman Spencer Bachus (R-AL). Bachus has served on the committee since 1993 and has been Ranking Member since 2007.

The jurisdiction of the Senate Committee on Banking, Housing and Urban Affairs includes all proposals or legislation pertaining to, among other things, banks, banking, and financial institutions; deposit insurance; economic stabilization and defense production; federal monetary policy; and financial aid to commerce and industry. Recent com-

mittee hearings for the "Oversight of Dodd-Frank Implementation" include "Monitoring Systemic Risk and Promoting Financial Stability" and "A Progress Report by the Regulators at the Half-Year Mark." For the 112<sup>th</sup> Congress, the committee retained its Democratic majority with a ratio of 12 Democrats to 10 Republicans (as compared to 13 Democrats to 10 Republicans last year). There are four new Republican members; one new Democratic member; and, due to Senator Christopher Dodd's (D-MA) retirement, a new chairman: Senator Tim Johnson (D-SD). Johnson has served on the committee since 1997 and is considered a moderate Democrat. ★

*Meg Melusen is Counsel for NOLHGA.*

## Scorecard 2: The House Financial Services Committee

### Republican Committee Members

Spencer Bachus, Chairman (AL)	Kevin McCarthy (CA)
Jeb Hensarling, Vice Chairman (TX)	Stevan Pearce (NM)
Peter King (NY)	Bill Posey (FL)
Edward Royce (CA)	Michael G. Fitzpatrick (PA)
Frank Lucas (OK)	Lynn Westmoreland (GA)
Ron Paul (TX)	Blaine Luetkemeyer (MO)
Donald Manzullo (IL)	Bill Huizenga (MI)
Walter Jones (NC)	Sean P. Duffy (WI)
Judy Biggert (IL)	Nan A. S. Hayworth (NY)
Gary Miller (CA)	Jim Renacci (OH)
Shelley Moore Capito (WV)	Robert Hurt (VA)
Scott Garrett (NJ)	Robert J. Dold (IL)
Randy Neugebauer (TX)	David Schweikert (AZ)
Patrick T. McHenry (NC)	Michael G. Grimm (NY)
John Campbell (CA)	Francisco R. Canseco (TX)
Michele Bachmann (MN)	Steve Stivers (OH)
Thaddeus McCotter (MI)	Stephen Lee Fincher (TN)

### Democratic Committee Members

Barney Frank, Ranking Member (MA)	Brad Miller (NC)
Maxine Waters (CA)	David Scott (GA)
Carolyn Maloney (NY)	Al Green (TX)
Luis Gutierrez (IL)	Emanuel Cleaver (MO)
Nydia Velázquez (NY)	Gwen Moore (WI)
Melvin Watt (NC)	Keith Ellison (MN)
Gary Ackerman (NY)	Ed Perlmutter (CO)
Brad Sherman (CA)	Joe Donnelly (IN)
Gregory Meeks (NY)	André Carson (IN)
Michael Capuano (MA)	Jim Himes (CT)
Rubén Hinojosa (TX)	Gary Peters (MI)
William Lacy Clay (MO)	John Carney (DE)
Carolyn McCarthy (NY)	
Joe Baca (CA)	
Stephen Lynch (MA)	

■ = New members

## Scorecard 3: The Senate Banking Committee

### Republican Committee Members

Richard C. Shelby, Ranking Member (AL)	Patrick J. Toomey (PA)
Mike Crapo (ID)	Mark Kirk (IL)
Bob Corker (TN)	Jerry Moran (KS)
Jim DeMint (SC)	Roger F. Wicker (MS)
David Vitter (LA)	
Mike Johanns (NE)	

### Democratic Committee Members

Tim Johnson, Chairman (SD)	Herb Kohl (WI)
Jack Reed (RI)	Mark R. Warner (VA)
Charles E. Schumer (NY)	Jeff Merkley (OR)
Robert Menendez (NJ)	Michael F. Bennet (CO)
Daniel K. Akaka (HI)	Kay Hagan (NC)
Sherrod Brown (OH)	
Jon Tester (MT)	

■ = New members

federal activities bearing on the guaranty safety net

- What's happening in the industry and state regulation
- The impact of the federal health-care law
- Critical first steps to take in an insolvency

As always, CLE credit (including ethics) will be applied for in all states that recognize CLE. In past years, attendees have received 8 to 10 hours of CLE credit for attending the Legal Seminar.

Attendees will also be treated to an outstanding speaker lineup. The seminar will feature an interview with **Ted Mathas**, the Chairman, President, and CEO of New York Life Insurance Company, conducted by NOLHGA President Peter Gallanis. **Alessandro Iuppa**, Senior Vice President of Government and Industry Affairs for Zurich Financial Services Group and a former NAIC President,

will participate in a discussion of federal insurance regulation; and **Jim Mumford**, First Deputy Insurance Commissioner with the Iowa Insurance Division and a former NOLHGA Chair, will discuss the relationship between guaranty associations and receivers. Other confirmed speakers include California Insurance Commissioner **Dave Jones**; **Scott Harrington** of the Wharton School; and Susan Blount, Debbie Long, and Nick Latrenta, the General Counsels of (respectively) Prudential Financial, Protective Life, and MetLife.

The Legal Seminar Luncheon on July 21 will offer a special treat for attendees. In keeping with San Francisco's pivotal role in the digital revolution, our luncheon speaker will be "cyborg anthropologist" **Amber Case**, who will speak about how technology is changing the human experience. Ms. Case was featured in *Fast Company* 2010 as one of the Most Influential Women in Technology and has been featured in *Forbes*, *WIRED*, *Time*, and many other publications, both in the United States and around the world. ★

## Program Highlights

### Living in a Dodd-Frank World

The Dodd-Frank Act has been on the books for one year, and companies are adapting to the law as Congress watches its implementation by multiple federal agencies. This panel will focus on the financial crisis that gave rise to Dodd-Frank, the new regime for systemically significant financial companies, resolution authority, international issues, and other parts of Dodd-Frank.

### Receiver/Guaranty System Interactions, Cooperation & Relationships

Protecting policyholders is the job of receivers and guaranty associations. This panel will talk about how best to do that in the world of insurance companies with complex product, financial, and legal relationships that require close cooperation among all responsible parties to get to the best result for consumers and the guaranty associations who support them.

### Straight Talk from General Counsels

We have assembled a distinguished panel of general counsels who will talk about the most significant legal issues confronting insurers today.

### Discussion with New York Life's Ted Mathas

The cross-currents impacting insurers—legal, financial, and public policy—will be at the center of a discussion with NOLHGA President Peter Gallanis.

### The New Health-Care Arena

Health-care/health insurance reform touches 300 million Americans and the insurance companies that insure them. That "touch" has implications for health insurers of all types, but also for the guaranty system. This panel will consider those implications and more!

### Preparing for a Domestic Insolvency—Specific Strategies & Tools

A panel of receivership experts will discuss "nuts and bolts" issues and strategies to use in preparing for an insolvency.

### Taxing Issues

With sweeping tax reform a possibility, what keeps company people up at night on the tax front? If changes are made, what are they likely to look like? Can life and annuity products be competitive if their current tax treatment is changed (for the worse) in whole or in material part?



# NOLHGA Calendar of Events

## 2011

- July 19–20      **MPC Meeting**  
**San Francisco, California**
- 
- July 21–22      **NOLHGA's 19<sup>th</sup> Annual Legal Seminar**  
**San Francisco, California**
- 
- August 29–  
September 1      NAIC Summer National Meeting  
Philadelphia, Pennsylvania
- 
- September 7–9      **MPC Meeting**  
**Reston, Virginia**
- 
- October 10      **MPC Meeting**  
**Chicago, Illinois**
- 
- October 11–12      **NOLHGA's 28<sup>th</sup> Annual Meeting**  
**Chicago, Illinois**
- 
- October 16–18      ACLI Annual Conference  
Orlando, Florida
- 
- November 3–6      NAIC Fall National Meeting  
Washington, D.C.

## 2012

- January 9–11      **MPC Meeting**  
**Orlando, Florida**
- 
- March 3–6      NAIC Spring National Meeting  
New Orleans, Louisiana
- 
- August 11–14      NAIC Summer National Meeting  
Atlanta, Georgia
- 
- October 1–3      **NOLHGA's 29<sup>th</sup> Annual Meeting**  
**San Antonio, Texas**
- 
- October 21–23      ACLI Annual Conference  
Washington, D.C.
- 
- November 29–  
December 2      NAIC Fall National Meeting  
Washington, D.C.



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