



STATEMENT FOR THE RECORD OF

NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

AT THE HEARING ON

“H.R. 5840, THE INSURANCE INFORMATION ACT OF 2008 “

BEFORE THE

SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE AND GOVERNMENT
SPONSORED ENTERPRISES

HOUSE FINANCIAL SERVICES COMMITTEE

June 10, 2008

The National Association of Mutual Insurance Companies (“NAMIC”) is pleased to offer comments to the Capital Markets, Insurance, and Government Sponsored Enterprises Subcommittee to examine legislation to create a federal insurance advisor.

Founded in 1895, NAMIC is the largest full-service national trade association serving the property-casualty insurance industry with more than 1,400 member companies in the United States. NAMIC members are small farm mutual companies, state and regional insurance companies, risk retention groups, national writers, reinsurance companies, and international insurance giants. NAMIC members are distinguishable by not only their size, but their diversity in business models and markets. Our member companies support reform of the state based insurance regulatory system to reflect a diverse and dynamic 21st century marketplace, reduce inefficiencies and redundancies, streamline product approvals and licensing and move toward open competition based pricing.

For over 135 years insurance regulatory authority has been vested within the states. In response to the United States Supreme Court decision in *United States v. South-Eastern Underwriters Association*, 322 U.S. 533 (1944), that insurance was “interstate commerce” and subject to regulation by the federal government, Congress enacted the McCarran-Ferguson Act, which provided for the continued regulation of insurance by the states

While the states retain regulatory authority and responsibility, Congress and the federal government play meaningful roles in the business of insurance, including creation of federal insurance programs such as the National Flood Insurance Program, federal insurance backstops such as the Terrorism Risk Insurance Act, and oversight, including hearings and investigations by congressional committees and the General Accountability Office.

The increasing globalization of financial markets and integration of products and services has led to calls for an enhanced role for the federal government in insurance regulation. Legislation has been introduced in this and past Congresses to create an optional federal charter and the Treasury Department recently released a blueprint for financial reform proposing the establishment of an Office of Insurance Oversight and transitioning to a federal charter over time.

Following the release of the Treasury Blueprint, Chairman Paul Kanjorski (D-PA) introduced H.R. 5840, the Insurance Information Act of 2008, to create a federal insurance advisor within the Department of Treasury. Joining Chairman Kanjorski as original cosponsors were Financial Services Committee members Deborah Pryce (R-OH), Edward Royce (R-CA), Melissa Bean (D-IL), and Dennis Moore (D-KS).

NAMIC supports a reformed state-based insurance regulatory system with an appropriate role for Congressional oversight and review. Congress could also play a limited and supporting role in achieving national uniformity and consistency through the adoption of federal standards. An Office of Insurance Information, if properly constructed and contained, could help modernize the insurance regulatory marketplace and reduce inconsistencies and redundancies, while recognizing and respecting the rightful and necessary role of state-based regulation.

H.R. 5840

The Insurance Information Act of 2008 would establish an Office of Insurance Information (“OII”) within the Department of the Treasury as the principal advisor to the President and Congress on domestic and international policy matters in connection with all lines of insurance, except health insurance. The OII would have the authority to:

- receive, analyze, collect and disseminate data and issue reports;
- coordinate federal efforts and establish policy on international insurance matters;
- determine consistency of state laws and regulations with federal international insurance policy;
- advise the Secretary of Treasury on domestic and international insurance policy issues;
- serve as a liaison between the federal government and the National Association of Insurance Commissioners (“NAIC”); and
- serve as Treasury representative to the Trade Promotion Coordinating Committee.

NAMIC, a supporter of state-based insurance regulation, supports Congress's limited role in insurance oversight. An example of this approach is the adoption by the House of H.R. 1065, which streamlines regulation for nonadmitted insurance and reinsurance carriers. NAMIC supported passage and likewise supports H.R. 5611, the National Association of Registered Agents and Brokers Reform Act of 2008. A well-defined, carefully delineated structure within the Department of Treasury, without regulatory or supervisory authority, could work to facilitate streamlining and modernization of the state-regulatory system and reduce redundancies and inefficiencies within the system.

As we consider the creation of a new office within the federal government dedicated to insurance related issues, we must carefully balance the benefits of the office with the burdens imposed on insurers and producers and the relationship with other entities.

Data Collection

Insurers and producers currently provide volumes of information to state regulators in the form of annual financial statements, market conduct data and other routine and special data calls. Production of this information is costly and time consuming. Attempts by the federal government through the OII to duplicate information currently produced would be redundant and would add to the time and expense already incurred. In addition, if the information requested differs, even slightly, from the data provided to state regulators, insurers and producers would incur additional time and expense to reformat and capture data.

The Act would authorize, but not require, the OII to collect data from the NAIC, member states or affiliates. The Act, however, does not specifically allow the OII to utilize other entities, such as registered statistical agents, to collect and remit the data. Collection of data by the NAIC has raised serious concerns for insurers. The NAIC is not a regulator and serious and unanswered questions arise in the context of the confidentiality and protection of data collected. The NAIC's ability to maintain confidentiality and enter into agreements to provide for that confidentiality is legally untested. By designating the NAIC as the primary conduit (the NAIC itself, a member or an affiliate thereof) through which data could be collected, the Act elevates the NAIC to a new quasi-regulatory role.

NAMIC believes that OII data collection could be accomplished more efficiently and with greater assurances of confidentiality and privilege protections through the use of independent third-party statistical agents. Statistical agents are licensed and regulated by the states to perform these types of data collection and remittance functions and have a long and trusted relationship as stewards of confidential industry information.

Confidentiality and Privilege of Information

The Act does not specify the exact information that could be received, collected, analyzed or disseminated by the OII. Data held by insurers which could be obtained by the OII is often confidential, private or sensitive in nature. As such, proper protections must be included that will appropriately safeguard the integrity and security of that data. Data may, for example, contain personally identifiable information, business information that could be used by competitors or company or industry information that could be used to inappropriately assert legal claims, including class action lawsuits. The broad discretion that the statute grants to the Office in identifying information to collect necessitates the most stringent controls on the dissemination and republication of that data or components thereof.

The OII should at a minimum be required to protect any information it collects, whether directly or indirectly through a third party, as privileged and confidential in the same manner that the Internal Revenue Service is required to protect the information it collects from taxpayers. As such the statute should bar OII from disseminating or otherwise producing or republishing any information that would be identifiable as received from a particular insurer or producer. In addition, the provision of information to the OII, directly or indirectly, should not constitute a waiver of any federal or state privilege or right of confidentiality held by such insurer or producer. Similarly, the statute must provide that disclosure of information by any insurer or producer to the OII, directly or indirectly, will not constitute a violation on the part of any insurer or producer of any obligation it may have to protect the privacy and confidentiality of information held with respect to any individual or entity, including without limitation obligations to protect privacy and confidentiality arising by agreement or under state or federal law, regulations or court orders.

International Insurance Policy

The Act would authorize the OII to establish federal policy on international insurance matters and to enter into agreements with foreign governments, authorities or regulatory entities. Such agreements would preempt any state law or regulation to the extent that the measure treats a non-United States insurer domiciled in the jurisdiction less favorably than it treats a domestic insurer. The changes in the Act related to the scope of the preemption and authority to establish policy is a positive step. The initial legislation raised concerns that the undefined term "international insurance matters" could be read overly broadly and be used to override underlying state policies. Limiting the preemption to provisions that treat insurers differently based on their domicile is an improvement of the legislation.

However, the Act entrusts broad authority to establish policy with the OII, in consultation with a newly created Advisory Group. NAMIC believes that Congress must exercise appropriate oversight over the activities of the OII and that policy should be subject to congressional review.

Preemption

The Act provides for the preemption of state insurance laws or regulations that are inconsistent with agreements relating to federal policy on international insurance matters to the extent that they treat non-United States insurers less favorably than United States insurers. Prior to determinations the OII would publish in the Federal Register notice of the potential inconsistency or preemption and a description of state laws or regulations at issue for public comment. In the event of a determination of preemption the decision would be

published in the Federal Register and the affected state would be notified. A reasonable period of time would be established before the preemption became effective. After the expiration of the period, if OII determines that the inconsistency still exists the Office would be required to notify the state and publish notice in the Federal Register that the state law is preempted. The Secretary of the Treasury would be permitted to stay the preemption if determined to be necessary for prudential reasons.

The inclusion of provisions for publication of determination and public comment are important additions to the Act. The addition of administrative procedures and protections are also a step in the right direction; however, they do not negate the need for judicial redress. States or parties with standing must be given the opportunity to appeal the decision of the Secretary of the Treasury and to have the preemption stayed during the pendency of the proceeding. The Act should also provide that the burden of proof to justify the preemption of state law or regulation rests with the Department and decisions related to preemption should not be given Chevron deference.

Advisory Group

The Act establishes an Advisory Group to the Office of Insurance Information ("Advisory Group"). The panel of no more than 13 members would be comprised of representatives of the NAIC, Department of Commerce, Federal Trade Commission and the Office of United States Trade Representatives, and such representatives of the insurance industry, consumer groups and other organizations the Secretary of Treasury deems appropriate. The role of the Advisory Group will be essential to the success of the OII and it is important that the members be actively involved in the work of the Office and that its membership be representative of all interests involved.

The Act provides for more than one representative of the NAIC, but does not specify the number of the 13 positions that may be filled by the NAIC. The NAIC, as a private entity, is not a regulator and therefore, NAMIC believes that legislation should provide for representatives of state regulators nominated by the NAIC, rather than representatives of the NAIC. Representatives should be regulators or their designees and should not be NAIC staff or non-regulatory persons. The number of regulator representatives should also be limited to no more than 20 percent of the Advisory Group.

Regulators implement and enforce state insurance laws enacted by state legislators. State legislators are at the forefront in the development of state insurance policy and must be represented on the Advisory Group. NAMIC strongly recommends the addition of designated representatives of state legislative government nominated by the National Conference of Insurance

Legislators (NCOIL), the National Conference of State Legislatures (NCSL) and the American Legislative Exchange Council (ALEC).

Industry representation on the Advisory Group must be guaranteed by the legislation, rather than left to the discretion of the Secretary, and should include at a minimum one representative of the property and casualty industry and one representative of the life insurance industry. The insurance industry is not a monolith and the interests of the two distinct lines of the industry are best served by separate representation. Similarly, producers should be independently represented on the Advisory Group.

National Association of Insurance Commissioners

As previously mentioned the Act through various references to the NAIC appears to elevate the organization to a new quasi-regulatory role. The NAIC, although it has expanded its services significantly in recent years, remains by its own admission a “regulatory support organization.” Although the organization provides a forum for coordination among state regulators and it may recommend policy, it does not establish state insurance regulatory policy nor does it enforce those policies. While it provides legal advice to state regulators it does not make or prosecute those laws. Each state has its own insurance laws and regulatory structure.

The goal of the OII should be to serve as a liaison and coordinate with state insurance legislators and regulators. The NAIC may be a conduit through which to facilitate that coordination, but the goal itself should not be coordination with the NAIC, but with their member regulators. The bill makes several references to the NAIC, including the OII as the liaison between the federal government and the “NAIC;” representation by the “NAIC” on the Advisory Group and consultation with the “NAIC” on biennial reports. NAMIC strongly urges amendment of the legislation to reference “state regulators” rather than the “NAIC.” Recognizing that the OII will interact with the NAIC, the act should encourage direct interaction with state regulators.

Likewise the Act should provide for coordination and liaison with state legislators. Language should be added to the function of the Office to provide for such coordination.

Conclusion

We appreciate the Subcommittee’s commitment to insurance regulatory reform and pledge to work closely with the members to achieve meaningful and effective reforms for an open and competitive 21st insurance marketplace. NAMIC remains committed to a reformed state-based insurance regulatory structure, but recognizes and supports an appropriate Congressional role in oversight. The

establishment of an Office of Insurance Information within the Department of Treasury, if accompanied by the strongest confidentiality and privilege protections, limited in scope, coordinated with the advice of a well-balanced advisory panel, with limited pre-emptive authority and overseen by Congress, could play a vital role in this modernization effort. We believe that the legislation as modified by the Chairman's discussion draft is a significant step in that direction and could effectively provide needed insurance expertise in Washington and assistance with international insurance matters. We urge the Committee to include additional changes to address concerns raised in these comments as the process moves forward.

We look forward to working with Chairman Kanjorski, Ranking Member Pryce and members of the subcommittee and full committee to achieve our shared goals of a healthy and competitive insurance marketplace.