National Association of Insurance Commissioners & The Center for Insurance Policy and Research

Statement for the Record
From the National Association of Insurance Commissioners
For the House Financial Services Committee
Hearing on "A Legislative Proposal to Create Hope and Opportunity for Investors, Consumers and Entrepreneurs"
April 26, 2017

Chairman Hensarling, Ranking Member Waters, and members of the House Financial Services Committee, the National Association of Insurance Commissioners (NAIC)[1] appreciates the opportunity to submit this written statement for the April 26, 2017 hearing on "A Legislative Proposal to Create Hope and Opportunity for Investors, Consumers, and Entrepreneurs." As regulators of the largest and most diverse insurance market in the world, our focus is on the dual objectives of protecting insurance consumers and ensuring vibrant, competitive insurance markets in our states. To that end, we share the goal of providing a balanced, measured, and appropriately sized regulatory environment that allows for innovation and opportunity, while not sacrificing consumer protections. The Financial CHOICE Act has some promise in this regard, but improvements need to be made to ensure that it works for the insurance sector and its regulation. We have serious concerns with certain aspects of it, most notably the inclusion of the office of the Independent Insurance Advocate.

For more than 150 years, states have successfully regulated the insurance sector in this country. Through our approach to regulation, our sector has weathered several economic downturns and crises, including the most recent financial crisis. Insurers remained solvent and claims were paid to insurance policyholders. While several hundred banks failed, only a few insurers did. Today, much of the insurance sector is as strong as ever. Notwithstanding our track record, throughout the past six years, we have witnessed significant levels of federal overreach in the insurance sector we regulate. Such intrusion is not only unnecessary and inefficient, but it has proven to be ineffective, has distorted the competitive landscape and threatened to undermine policyholder protection. From the Collins Amendment fix that provided the Federal Reserve flexibility to create capital standards for certain insurance holding companies, to the Policyholder Protection Act that ensured that insurance company assets remained available to pay insurance consumer claims, the NAIC and state insurance regulators have expended time and resources working with Congress to fix problems created initially by federal solutions. Even then, issues still remain including unsupported and substantively flawed designations of insurance companies by the Financial Stability Oversight Council (FSOC), an ambiguous Covered Agreement negotiated with little input from regulators that potentially preempts insurance consumer protections,

[1] Founded in 1871, the NAIC is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and the five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.

and an opaque international standard-setting process creating standards that, in some cases, would not work for the U.S. insurance sector and consumers.

We urge the committee not to let history repeat itself. With respect to insurance and consistent with the Trump Administration's stated policy objectives, Congress should focus on proposals that reduce the federal government's intrusion in the regulation of the sector not expand it. While the CHOICE Act shows some promise in this regard, it also continues to make the mistakes of the past. Specifically, state insurance regulators have serious concerns with the creation of the Independent Insurance Advocate, oppose its inclusion in the CHOICE Act, and instead urge elimination of the Federal Insurance Office as both are unnecessary. While at first blush a proposal to combine the Federal Insurance Office with the Office of FSOC's independent member would appear to merely concentrate the federal footprint in insurance policy, a policy office with this size, scope, independence, and rulemaking authority within the Treasury Department would be unprecedented and would create an entity with the trappings of a regulator. The new office assumes, with some minor modifications, FIO's authorities. However, a standalone office is not needed to carry out those authorities. The roles for which FIO or the Independent Insurance Advocate could provide some value (e.g., housing federal insurance expertise, overseeing the Terrorism Risk Insurance Program, coordinating federal agencies as it relates to insurance), can be filled by the Treasury Department without a stand-alone office or agency – indeed, many of these functions were being addressed by Treasury before FIO's creation. While insurance regulators agree that the federal government should have access to insurance expertise, there is simply no need for a standalone office in any form to conduct these functions under the imprimatur of its own authorizing statute.

Under the current Choice Act proposal, the Independent Insurance Advocate would also continue to play FIO's international role, a role that, to date, has complicated and confused U.S. engagement on insurance regulatory standard setting. Prior to the establishment of FIO, certain insurance sector participants created a mythology that Treasury's involvement in insurance regulatory standard-setting was necessary for the U.S. to "speak with one voice" and to achieve better outcomes for U.S. insurers in those processes. Despite the FIO's substantial involvement at the International Association of Insurance Supervisors (IAIS) over the past five years, the Treasury's policymaking process has never been clear and, in some cases, has made it more difficult for U.S. regulators to defend the state-based system and influence the standard-setting process. The standards developed by the IAIS continue to reflect a largely European approach to supervision and in certain fundamental aspects would not be compatible with the U.S. system. In fact, several pieces of legislation have been proposed by members of Congress including three members of the House Financial Services Committee to address concerns that were created by virtue of FIO's involvement in international standard setting. Furthermore, the Independent Insurance Advocate would not be a regulator, so its involvement in regulatory standard-setting undermines state regulator independence and authority. It has been argued that only the federal government can bind the U.S., which is true, but this fails to recognize that activities of international standard-setting bodies like the IAIS are binding on no one – not the U.S. and not even the states who participate. The idea that the U.S. is at some disadvantage by virtue of its state regulatory system is simply false. To be clear, there are venues and dialogues occurring at the international level where Treasury does engage and provide coordination of U.S. state and federal regulators, and those should continue. But Treasury has no business taking an exclusive leading role on insurance regulatory policy at the IAIS where all the standards must ultimately be considered at the state level. To the extent Treasury needs to engage internationally with foreign governments and entities on insurance matters, Treasury has an entire Office of International Affairs that is equipped to do so.

Like the independent member does today, the Independent Insurance Advocate would serve in a voting capacity on FSOC, albeit an FSOC with vastly curtailed authority. We wholeheartedly agree that FSOC is in dire need of serious reform. While well-intentioned, its design and implementation is seriously flawed. We agree that the non-banks designation process is in need of significant reform and we were pleased to see that the CHOICE Act seeks to address very serious concerns insurance regulators and others have had with an arbitrary process that has yielded procedurally and substantively flawed designations of insurance firms. We strongly support formal vehicles for regulators to convene, coordinate, and share information regarding risks to our financial system, and the CHOICE Act proposes to have the FSOC continue to serve that function. Because the Independent Insurance Advocate is not a regulator, its role on the Council under the CHOICE Act construct is at best, superfluous.[2] Instead, a state insurance regulator should be given a voting seat. State insurance regulators are the primary financial regulators for the largest insurance sector in the world, yet, under the Dodd-Frank Act, have been singled out as the only primary financial regulator without a voting seat on FSOC. To ensure that the insurance perspective is adequately represented in FSOC discussions, state insurance regulators should be given a vote on the council.[3]

In addition to our concerns with the creation of the Independent Insurance Advocate, we also share the concerns of our fellow state regulators with the text of Section 391. We very much agree with the spirit of this section to encourage coordination among regulators. For our part, we strive to coordinate as much as possible with our federal counterparts, particularly the Federal Reserve, and share any relevant or requested information with federal agencies to reduce burden on our regulated companies. Historically, our concerns with coordination have stemmed from our federal counterpart's failure to rely on our work or to share their information with us. We have concerns that the text of Section 391 allows federal agencies to continue this practice by enabling them to develop policies that dictate the terms of engagement with state insurance regulators. As the primary regulators of the insurance sector, our federal counterparts should be required to defer to us, not the opposite.

In conclusion, we believe that the Financial CHOICE Act has promise to provide needed reforms to the federal financial regulatory framework, promote competitive markets, and protect consumers. However, history has proven that insurance regulation at the state level has served this country and its citizens well throughout the past 150 years. We urge the committee to rethink those areas of the Financial CHOICE Act that expand and concentrate a duplicative federal presence in our work, are inconsistent with our state insurance regulatory system, and undermine our ability to promote vibrant, competitive insurance markets and protect insurance consumers. We appreciate your consideration of our proposals and look forward to working with you to address these issues. Thank you for the opportunity to submit this written statement for the record.

[2] Should the FSOC continue to exist in its present form, we would support legislation to allow Roy Woodall to continue on as the voting independent member with insurance expertise until any successor is appointed by the President and confirmed by the Senate. It is critical that the Council have a voting member with substantial insurance expertise.

[3] Any constitutional concerns could be addressed by meeting the requirements of the Appointments clause and having the President appoint the state insurance regulator member.