

September 17, 2018

The Honorable Mitch McConnell
Senate Majority Leader
317 Russell Senate Office Building
Washington, DC 20510

The Honorable Charles Schumer
Senate Minority Leader
322 Hart Senate Office Building
Washington, DC 20510

RE: H.R. 4537, the International Insurance Standards Act

Dear Majority Leader McConnell and Minority Leader Schumer:

On behalf of our nation's insurance regulators, the National Association of Insurance Commissioners (NAIC)¹ would like to express its support for continued inclusion of H.R. 4537, the International Insurance Standards Act, in S. 488, the JOBS and Investor Confidence Act. H.R. 4537 has been vetted and refined through House committee hearings and bipartisan collaboration, ultimately passing the House of Representatives by voice vote on July 10, 2018, and as part of S. 488, on July 17, 2018.² It is vital that the Senate pass these bipartisan international insurance provisions to protect U.S. insurance consumers and companies.

The NAIC greatly appreciates the work done to enact S. 2155, the Economic Growth, Regulatory Relief, and Consumer Protection Act, which included legislation introduced in the 114th Congress (S. 1086) by Senators Dean Heller (R-NV) and Jon Tester (D-MT). The NAIC supported that legislation from the outset and advocated for its inclusion in S. 2155. Those provisions will bring about an additional level of congressional oversight to international insurance standard-setting activities and are a significant step forward in addressing concerns relating to the lack of transparency of international activities. However, while significant, those provisions were limited in scope and did not seek to address several other concerns regarding international insurance regulatory standard-setting activities and the covered agreement process. The International Insurance Standards Act, H.R. 4537, sponsored by House Subcommittee on Housing and Insurance Chairman Sean Duffy (R-WI) and Representative Denny Heck (D-WA) addresses these remaining concerns, is complementary to, and builds upon S. 2155 as delineated below.

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.

² S. 488 passed the House of Representatives by a vote of 406-4.

Recognition of the U.S. System of Insurance Regulation

One of the most important provisions of H.R. 4537, Section 3(a)(1), would require that federal representatives only agree to international standards or agreements that would recognize the U.S. system of insurance regulation as satisfying such proposals. In so doing, the bill bolsters and complements the international insurance provisions found in S. 2155 by preserving the ability of domestic lawmakers and regulators—rather than international bodies—to determine appropriate insurance regulatory requirements for the United States.

The United States is the largest and most competitive insurance market in the world and our system of insurance regulation has been operating effectively for well over a century. While international standards are not legally binding, our system is held accountable to them even when they may not be appropriate for our market. For instance, international organizations such as the Financial Stability Board (FSB) and the International Association of Insurance Supervisors (IAIS) are developing new global regulatory standards that may be incompatible with the U.S. system of insurance regulation and not in the best interests of U.S. consumers and industry. While not binding, the IAIS's Insurance Core Principles (ICPs) form the basis for the International Monetary Fund's Financial Sector Assessment Program (FSAP). An FSAP encourages adherence to the standards often without regard for differences in legal and regulatory structures.

As the NAIC and state insurance regulators have been directly involved in the negotiations of international regulatory standards at the IAIS since its establishment, it is our considered view based on our experience, that Section 3(a)(1) will provide significant leverage for U.S. interests in international discussions. It makes clear to foreign participants that those representing the U.S. are not at liberty to negotiate away core aspects of the U.S. approach to regulation and therefore must work with U.S. federal and state representatives to develop standards that are compatible with the U.S. system. While we value the perspective of our international colleagues and have adapted some of their best practices for our own use through the years, we must do so through processes here at home, not through agreements at unaccountable international organizations abroad.

Full Participation of Insurance Regulators in International Discussions

Section 4 of H.R. 4537 requires the federal government to “closely consult, coordinate with and seek to include” state insurance regulators (or designees) in international insurance standard-setting discussions, wherever they may occur. Despite significant efforts to work with federal agencies on international matters, we have historically been disappointed in the lack of depth in the interactions as well as the refusal to include state insurance regulators in international insurance discussions in forums other than the IAIS. In recent years, state regulators have been barred from critical meetings or relegated to an observer role. For example, the U.S. Department of the Treasury, the Federal Reserve Board and the Securities and Exchange Commission are members of the FSB. FSB working groups have had several discussions regarding insurance regulatory matters yet state insurance regulators have been predominantly excluded from such deliberations. Similarly, in recent years, the Treasury's Strategic and Economic Dialogue with China and its successor, the U.S.-China Comprehensive Economic Dialogue, as well as the Financial Markets Regulatory Dialogue, have not included state regulators, even though our regulatory counterparts from those jurisdictions were included, and in the past state regulators had a role in those meetings.

As our counterparts from other countries are seated at the table in international insurance standard-setting negotiations, it is appropriate and necessary to ensure U.S. insurance regulators can participate fully in these discussions. While it is unfortunate that legislation is necessary to provide for this

participation in international fora, it is imperative that the perspective of the primary regulators of the insurance industry be fully represented and, if our past experience is any indication, our participation is not otherwise guaranteed.

Clarification of the Role of the FIO at the IAIS

H.R. 4537 clarifies that the Federal Insurance Office (FIO) represents the United States Federal Government and not state insurance regulators at the IAIS. Similar to the International Organization of Securities Commissions (IOSCO) and the Basel Committee, the IAIS is an international regulatory standard-setting body. Its membership is composed of insurance regulators and supervisors from around the world. The NAIC and state insurance regulators are founding members of the IAIS and have been engaged in its deliberations throughout its existence. The FIO and the Federal Reserve more recently joined the IAIS as members, but they have their own objectives and more narrow authorities. In particular, the FIO is not a regulator and its perceived role has historically complicated our own engagement at the IAIS. Unlike the IAIS, full membership at IOSCO and the Basel Committee is limited to regulatory representatives, and, therefore, FIO's involvement at IAIS was understandably confusing to our foreign counterparts. In fact, there have been instances when the FIO has taken positions counter to those of insurance regulators even though they have no responsibility for implementing international insurance regulatory standards. While we believe the Treasury Department has a role to play internationally, the FIO should not be making commitments on international regulatory standard-setting matters that could be perceived as commitments to be undertaken by U.S. state insurance regulators. By making clear that FIO represents the Federal Government and not the individual states at the IAIS, the legislation provides clear lines of demarcation between the roles of FIO and the primary regulators of the U.S. insurance sector at the IAIS.

Improvements to the Covered Agreement Process

Unlike S. 2155 which did not address the covered agreement process, H.R. 4537 would apply greater transparency and congressional oversight to future covered agreements. Certainly, the covered agreement process with the EU demonstrated the need for these improvements. Covered agreements are unlike other international agreements in that the Treasury Department and the USTR can make commitments U.S. insurance regulators are required to implement or face preemption of state law. Unlike a trade agreement, which is subject to established procedures for input from the states and a vote by Congress, consultation with a broader group of U.S. stakeholders including industry and consumer participants was not required and did not occur. State regulators were assured we would have direct and meaningful participation in the covered agreement process, but we were relegated to mere observers, subject to strict confidentiality with no ability to consult staff and fellow regulators.

Illustrating the need for coordination with primary regulators, the Treasury Department and the USTR were forced to provide a statement of U.S. policy clarifying the covered agreement with the EU in key areas like capital, group supervision, reinsurance and the Joint Committee. Had state regulators been closely consulted and coordinated with during the process as H.R. 4537 requires, the statement may not have been necessary. Opening up the evaluative process to regulators who are responsible for implementing a covered agreement will only make the process run smoother and could better enable support from states prior to the conclusion of negotiations.

In addition to providing more robust participation of state insurance regulators, H.R. 4537 would provide a mechanism for congressional disapproval for any proposed covered agreement. It is incongruous to require approval for other international agreements, but make an exception for insurance related agreements, and for foreign jurisdictions to require the approval by their own legislative bodies,

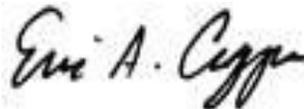
but not for the U.S. to do so. In fact, compromise language contained in H.R. 4537 does not even require affirmative approval for the covered agreement as provided for by the European Parliament and the European Council. Rather, Section 7 merely establishes a mechanism for a resolution of disapproval to be filed and considered in the Senate and House relating to a covered agreement within a 90-day period.

Thank you for your attention to this important matter. As S. 488 proceeds through the Senate, we ask that you preserve the integrity of Title XIV, the International Insurance Standards Act, to maintain a level playing field for U.S. insurers and recognize our insurance regulatory system that has worked to provide a robust market and benefit U.S. consumers for nearly 150 years.

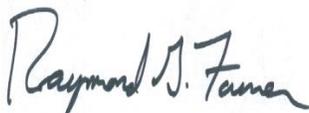
Sincerely,



Julie Mix McPeak
NAIC President
Commissioner
Tennessee Department of
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Gordon I. Ito
NAIC Secretary-Treasurer
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Insurance Division
Hawaii Department of Commerce
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Michael F. Consedine
Chief Executive Officer
National Association of Insurance
Commissioners

cc: The Honorable Michael Crapo, Chairman, U.S. Senate Banking Committee
The Honorable Sherrod Brown, Ranking Member, U.S. Senate Banking Committee