

November 18, 2020

The Honorable William Lacy Clay
Chairman
Subcommittee on Housing,
Community Development, and Insurance
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

The Honorable Steve Stivers
Ranking Member
Subcommittee on Housing,
Community Development, and Insurance
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Re: November 19, 2020 hearing on “Insuring Against a Pandemic: Challenges and Solutions for Policyholders and Insurers”

Dear Chairman Clay and Ranking Member Stivers:

On behalf of the National Association of Insurance Commissioners (NAIC),¹ we appreciate the opportunity to submit this letter for the November 19, 2020 hearing on “Insuring Against a Pandemic: Challenges and Solutions for Policyholders and Insurers.” As the COVID-19 pandemic continues to take a devastating toll on our nation, state insurance regulators share your commitment to working to help mitigate its damaging impacts and prepare for the future. We continue to focus on protecting the health and safety of insurance consumers and ensuring the ongoing stability and operation of our nation’s insurance sector. We appreciate the subcommittee’s attention to exploring the issues around the impact of pandemic risk and the roles the federal government, insurers, and businesses can potentially play to help alleviate that risk.

The risk of a pandemic is difficult to insure and state insurance regulators have seen evidence that demonstrates the insurance industry is not able to take on a substantial portion of this risk on their own. State insurance regulators, through the NAIC, issued a data call to collect business interruption (BI) information from insurers to understand which insurers are writing applicable coverage, the size of the market, the extent of exclusions related to COVID-19, and claims and losses related to COVID-19. The information collected includes data from 230 insurance groups writing coverage for business interruption including the top 50 commercial carriers, who alone represent over 80% of the market. Results show that nearly 8 million commercial insurance policies include business interruption coverage. Of that amount, 90% were for small businesses, defined as having 100 or fewer employees; 8% for medium businesses, defined as having 101-500 employees, and 2% for large businesses, defined as having 501 or more employees. Significantly, 83% of all policies included an exclusion for viral contamination, virus, disease, or pandemic and 98% of all policies had a requirement for physical loss. This is not surprising as insurance

¹ As part of our state-based system of insurance regulation in the United States, the NAIC provides expertise, data, and analysis for insurance commissioners to effectively regulate the industry and protect consumers. The U.S. standard-setting organization is governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer reviews, and coordinate regulatory oversight. NAIC staff supports these efforts and represents the collective views of state regulators domestically and internationally. For more information, visit www.naic.org.

works well and remains affordable when a relatively small number of claims are spread across a broader group. It is therefore not typically well suited for a global pandemic where virtually every policyholder suffers significant losses at the same time for an extended period.

The data also indicates that approximately 200,000 claims have been submitted by policyholders seeking lost income benefits under business interruption coverage with less than 2% of claims having been closed with payment, and nearly 82% of claims having been closed without payment due to no coverage under the policy. We recognize that the pandemic has caused massive disruptions to businesses and it is the expectation of state insurance regulators that insurance companies honor their commitments by paying claims that are covered by insurance policies. However, as we indicated in our March statement to Congress,² the NAIC opposes proposals to apply BI coverage retroactively to uncovered claims based on COVID-19 and has serious concerns that requiring retroactive coverage would pose significant risks to the solvency of insurers and potentially systemic impacts to the sector and financial system as a whole.

The data clearly illustrates insurers are largely unwilling or unable to underwrite the risk of a pandemic, creating an enormous coverage gap for American businesses and subsequent liability for American taxpayers. Going forward, Congress should consider proposals that depending on structure could limit taxpayer exposure to the economic consequences of the next pandemic without jeopardizing the solvency of the insurance industry. Therefore, the NAIC supports establishing a federal mechanism to help ensure widespread availability of business interruption insurance for pandemic risks. We understand there are several proposals to establish such a program, including legislation by Congresswoman Maloney (H.R. 7011), and proposals from industry and policyholders. While the NAIC does not have a position on any of the specific proposals at this time, to the extent the insurance sector or insurance contracts are the vehicles used to address such risks, it is critical that any legislative solution be designed in a manner that does not undermine state insurance regulatory authorities to protect insurance consumers and ensure the solvency of the industry. It also must not jeopardize the financial condition of insurance companies or affect their ability to pay other types of claims. Finally, any solution should be affordable to policyholders to ensure adequate take up rates, but also reduce the overall taxpayer exposure to risks from a pandemic.

Separately, we wanted to bring to the subcommittee's attention two reports³ that the NAIC has issued detailing state insurance regulators' response to the pandemic (attached). As detailed in those reports, state insurance regulators have been engaged in heightened monitoring of the insurance industry since the onset of the crisis and have taken several actions to protect consumers and ensure that the insurance sector remains strong. The NAIC has also created a Coronavirus Resource Center to help consumers, the business community, and insurance professionals understand and manage the risks of the COVID-19 pandemic.⁴

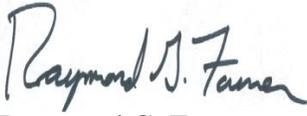
In conclusion, as state officials, we are perhaps closer to the consumers and businesses impacted by this pandemic than any other primary financial regulator. We are on the front lines assisting consumers with policy questions and talking to businesses about their concerns. We are committed to do all that we can to support our communities and remain committed to continuing to work with our federal, state, and local partners to help our country address the devastating health and economic impacts of COVID-19. Thank you for considering the state insurance regulatory perspective. We look forward to continued engagement with you as we work together to respond to the COVID-19 pandemic.

² https://content.naic.org/article/statement_naic_statement_congressional_action_relating_covid_19.htm

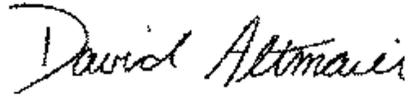
³ "A Report of the NAIC on the State Insurance Regulatory Response to COVID-19" (January 1, 2020 to May 31, 2020) https://content.naic.org/sites/default/files/inline-files/naic_covid_19_report_1%5B1%5D.pdf; A Report of the NAIC on the State Insurance Regulatory Response to COVID-19" (Update 2 / June 1—Sept. 30, 2020) https://content.naic.org/sites/default/files/naic_covid_19_report_update2.pdf

⁴ https://content.naic.org/naic_coronavirus_info.htm

Sincerely,



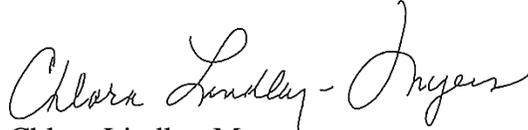
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