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

August 18, 2017

The Honorable Steven T. Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Re: Report on Asset Management and Insurance Industries

Dear Secretary Mnuchin:

On behalf of the National Association of Insurance Commissioners (NAIC),[1] we write in response to your request for written submissions relating to the upcoming Report on Regulations Impacting the Asset Management and Insurance Industries pursuant to Executive Order 13772, which requires an evaluation of the extent to which the financial regulatory framework promotes the administration's "Core Principles" for financial regulation. The NAIC believes the state insurance regulatory framework promotes these principles and provides an appropriately tailored regulatory environment with the dual objective of protecting insurance consumers and ensuring competitive insurance markets. At the same time, changes can be made to better rationalize federal involvement in domestic insurance regulation as well as international insurance standard setting to better support the core principles, and we offer these recommendations for your consideration.

Overview of Insurance Regulation:

For 150 years, states have been the primary regulators of insurance. Throughout history, the insurance sector has weathered economic downturns including the recent 2007-2009 financial crisis, in large part because of the structure and nature of the state insurance regulatory framework. In exercising their authorities, state insurance regulators balance regulatory prerogatives with the need to ensure competitive and robust markets within their states. Insurance provides protection to consumers and businesses for a multitude of risks such as the destruction or damage to a home or office building or the loss of a loved one. Therefore, the absence of a specific insurance product in a particular market can have serious, detrimental effects on local economies and citizens. It is for this reason that state insurance regulators are highly sensitive to local economic conditions and incentivized to create a regulatory environment

[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.

that not only protects consumers but also facilitates competitive markets for insurance products. Moreover, insurance products are different than other financial products, particularly banking products, in that they vary widely and are designed to accommodate specific risk mitigating needs. As a result, unlike other types of financial services regulation, insurance regulation must be flexible, local in nature, and regulators must be accessible and connected to the public they serve.

At its core, the insurance regulatory regime ensures insurance companies are financially solvent such that they are able to make good on insurance claims and consumers are treated fairly. As a general matter, insurance regulation is structured around several areas: 1) financial/solvency regulation, 2) market regulation, 3) product regulation, 4) insurance company licensing, 5) producer licensing, and 6) consumer services. Set forth below is a brief description of each area. We would be pleased to provide more detailed information should you require it.

Financial Regulation: Financial regulation is the linchpin of the state insurance regulatory system and provides crucial safeguards for America's insurance consumers by ensuring that a promise made to a policyholder by an insurance company is a promise kept. State insurance regulators oversee insurance companies at both the legal entity level (i.e., the operating insurer level) as well as the group level. Among other regulatory requirements, insurers are subject to risk based capital requirements, investment limitations, conservative reserving requirements, corporate governance requirements, and regulatory approval of material transactions with affiliates. State regulator oversight is an ongoing activity, including off-site analysis performed at least quarterly and periodic on-site examinations that occur on a scheduled basis. These activities utilize extensive insurance company reporting and disclosures that include, but are not limited to, annual and quarterly financial statements containing extensive and detailed information regarding an insurer's assets, liabilities and investments; enterprise risk reports; and an Own Risk and Solvency Assessment (ORSA). Regulators also engage in periodic meetings and inquiries of companies when any new concerns arise.

In the unlikely event an insurance company becomes financially impaired, state insurance regulators have broad authorities to take action, including deeming the company to be in hazardous financial condition and aggressively working with financially troubled companies to resolve the concern. In the event the insurer becomes insolvent, insurance has its own receivership regime in lieu of bankruptcy proceedings, designed to give priority to insurance consumers. In a receivership, insurance regulators can seek to rehabilitate the company or liquidate it. In the event of liquidation where insufficient assets exist to pay off all claims, state guaranty funds serve as a backstop to ensure policyholder claims covered by certain retail insurance products are paid up to statutorily prescribed limits. The state guaranty funds' monetary needs are met through assessments of the remaining insurance companies operating in a state.

Market Regulation: Market regulation seeks to ensure that consumers are charged fair and reasonable insurance prices, have access to beneficial and legally compliant insurance products, and are treated fairly by insurers. Similar to financial regulation, state law affords insurance regulators broad authorities to regulate the conduct of an insurer or a producer (insurance agents and brokers). Traditional market conduct examinations occur on a routine basis, but also can be triggered by complaints against an insurer. These exams review producer licensing issues, complaints, types of products sold by insurers and producers, sales practices, compliance with filed rating plans, claims handling and other market-related aspects of an insurer's operation. If violations are found, the insurance department makes recommendations to improve the insurer's operations and bring the company into compliance with state law. In addition, an insurer or insurance producer may be subject to civil penalties or license suspension or revocation.

Product Regulation: While the approach may vary by state and product type (life, property & casualty, and health), states typically have a product rate and form approval framework to ensure the products offered by insurers are reasonable and fair, easily understood by consumers, do not have major gaps in coverage, and provide policy benefits that are commensurate with the premiums charged. Historically, some insurers complained the required approvals and other regulatory requirements relating to specific insurance products slowed their ability to bring innovative products to market. To address these concerns, state insurance regulators, through the NAIC, developed the System for Electronic Rate and Form Filings (SERFF). SERFF provides a cost-effective method for handling insurance policy rate and form filings between regulators and insurance companies. SERFF enables companies to send and states to receive, comment on, and approve or reject insurance industry rate and form filings. SERFF has added efficiencies enhancing speed to market for rate and policy form filings. In 2016, more than 350,000 filings were processed through SERFF. States created the Interstate Insurance Product Regulation Commission (IIPRC) which establishes a central point of electronic filing. IIPRC expedites product filings, review, and approval for certain life, annuity, long term care, and disability income products and enables consumers to have faster access to competitive insurance products in an ever-changing marketplace. The IIPRC promotes consistency through application of national product standards embedded with strong consumer protections. Forty four states and Puerto Rico are members of the IIPRC. SERFF and the IIPRC make insurance product regulation more efficient and cost-effective for companies while not sacrificing the regulatory oversight that protects policyholders and enabling consumers to make informed choices in the marketplace.

Insurance Company Licensing: State laws require insurance companies to be licensed before selling their products. In 2016, there were approximately 5977 operating insurance companies in the U.S. All insurers are subject to the regulation in their state of domicile and in other states where they are licensed to sell insurance. Insurers who fail to comply with regulatory requirements are subject to license suspension or revocation, and states may exact fines for regulatory violations. Some have questioned the need for multistate licensure, but licensing is a critical consumer protection. State regulators are charged with protecting policyholders within their states and state licensing laws provide a key mechanism for states to take action against companies that may be mistreating their policyholders. In recognition of some of the logistical challenges for companies seeking licensure in multiple states, the NAIC has developed systems such as the Uniform Certificate of Authority Application (UCAA), which is an insurer licensing facilitation system that creates efficiencies for companies and assists in expediting the review process of a new company license.

Producer Licensing: Producers must be licensed to sell, solicit, or negotiate insurance and must comply with state laws and regulations governing their activities. Currently, more than two million persons are licensed to provide insurance services in the U.S. State insurance departments oversee producer activities to ensure consumers are treated fairly. In addition to licensing requirements, producers are subject to a myriad of regulatory requirements relating to their conduct as well as ongoing continuing education requirements. Producers who fail to comply with regulatory requirements are subject to fines, and license suspension or revocation.

Incorporated in 1996, the National Insurance Producer Registry (NIPR) is a unique public-private partnership that supports the work of the states and the NAIC in making the producer licensing process more cost-effective, streamlined and uniform. NIPR developed and implemented the Producer Database (PDB) and the NIPR Gateway. The PDB is an electronic database consisting of information relating to producers throughout the U.S. The NIPR Gateway is a communication network that links state insurance regulators with the entities they regulate to facilitate the electronic exchange of producer information.

In early 2015, Congress passed the National Association of Registered Agents and Brokers Act (NARAB II), which will further streamline the ability of producers to sell products in multiple states, while preserving state insurance regulatory authorities over producer conduct. Standards will be established by a board that has a majority of regulators as its members, a critical structural protection to ensure the standards are sufficiently robust to protect consumers. This association has yet to become operational pending the Presidential appointment of board members and confirmation by the Senate. Recognizing the regulatory process that was being replicated, NAIC's support for the legislation was contingent on ensuring a majority of the Board members are insurance regulators. We urge the administration to move expeditiously to make such appointments and to ensure all required regulator positions on the board are appointed before it begins operations.

Consumer Services: One of the most important roles for state insurance regulators is to resolve consumer concerns and empower them with information to make informed financial decisions. State insurance regulators have established toll-free hotlines, websites and special consumer service units to handle complaints against insurers and insurance producers. State insurance regulators have launched an interactive tool to allow consumers to research company complaint and financial data. The Consumer Information Source is a web-based tool which allows consumers to file a complaint, report suspected fraud and access key financial and market regulatory information about insurers. In 2016, state insurance departments handled more than 1,878,753 consumer inquiries and more than 305,240 formal consumer complaints. As needed, state insurance departments worked together with claimants, policyholders and insurers to resolve disputes. Many states sponsor consumer education seminars, provide brochures, and buying guides. Many also publish rate comparison guides to help consumers get the best value when they purchase insurance. The NAIC supplements state consumer education efforts through Insure U, which serves as a public education program and website for consumers and directs them to resources provided by states.

As state regulators exercise these regulatory authorities, they rely on the services provided by the NAIC to support their efforts and serve as a forum for regulatory collaboration and cooperation. The membership of the NAIC is comprised of the chief insurance officials of the 56 states and territories of the U.S. Through the NAIC, state insurance regulators establish model laws, regulations, standards and best practices. They also conduct peer review, share information on emerging trends, and coordinate regulatory oversight. The NAIC provides state insurance departments with assistance in carrying out their statutory responsibilities through regulatory, actuarial, legal, and technical support. Neither the NAIC nor its staff are regulators or exercise regulatory authorities. Any model laws, model regulations, technical guidance, and federal or international policy positions of the NAIC are developed and approved by its regulator members, and any model legislation must ultimately pass state legislatures.

Importantly, the NAIC's services and programs create efficiencies for the state regulatory system and make insurance regulation more cost-effective for states and the industry, ultimately making products more affordable for consumers. The NAIC has an accreditation program that drives regulatory consistency among states, particularly with respect to solvency regulation. In order to be accredited by the NAIC, state insurance departments must demonstrate they have enacted certain NAIC model laws in substantial form relating to virtually all elements of financial regulation (risk-based capital, holding company supervision, accounting, ORSA, etc.), and have the resources and expertise necessary to supervise insurers and protect policyholders within their states. Currently, **all states, D.C. and Puerto Rico are accredited.** This represents a significant commitment by states to establish baseline standards for the regulation of their domestic insurers, thereby protecting against regulatory arbitrage or a race to the bottom. Accreditation also drives efficiency. The fact that an insurer's domiciliary state is accredited allows other states to trust that state's solvency regulation and avoids duplicative regulatory processes. The NAIC also has processes to identify a "lead state" to coordinate the regulation of insurers that operate in multiple states. The NAIC houses the largest insurance database in the world and provides technological solutions (some of which were referenced above) that makes certain regulatory functions more efficient and cost-effective for states and therefore consumers. Indeed, the International Monetary Fund referred to the NAIC and state regulators' data analysis capability as "world leading" during the 2010 Financial Sector Assessment Program (FSAP).

Federal Government's Role in the Insurance Sector

While the states are the primary regulators, the NAIC acknowledges that the federal government has become increasingly involved in the insurance sector. Insurance plays an important role in our national economy and the NAIC believes that the federal government should have a strong interest in insurance sector developments and the sector's continued success. We also recognize that certain insurance programs are run by the federal government including the Terrorism Risk Insurance Program and the National Flood Insurance Program, which were created to address instances where the private market was, at least initially, unable to offer certain insurance products that were critical to U.S. economic growth and development. Finally, we fully appreciate the federal government has interest in the insurance sector's growth internationally. Though federal government involvement and interest in the insurance sector is entirely appropriate under these circumstances, it must be balanced with the continued delegation to the states of the regulation of insurance by the McCarran-Ferguson Act. To that end, we have recommendations for your consideration in three distinct areas: 1) federal involvement in insurance policy and regulation, 2) federal insurance programs, and 3) international standard setting.

<u>Federal Involvement in Insurance Policy and Regulation</u>

Notwithstanding the need for federal government engagement in insurance, there have been areas where the federal government's involvement in insurance policy and regulation has not been appropriately rationalized given the states' role as primary regulators. As a conceptual matter, we agree the federal government should have expertise in insurance to help advise the administration in certain policy areas, coordinate the monitoring of U.S. financial stability including any issues that may impact or emanate from the insurance sector, and, where appropriate, regulate non-insurance activities such as banking, securities, or derivatives. The functions should not however, supplant or duplicate the duties of state insurance regulators. Set forth below are some areas where we believe the federal government's role in insurance could be better organized.

Systemic Risk and Insurance

Insurance regulators are supportive of the Financial Stability Oversight Council's (FSOC) role as a systemic risk monitor, and a forum for coordination and information exchange among financial regulators.[2] We have long believed that the insurance sector should not be involved in systemically risky activities and have asked the FSOC and the Federal Reserve (as the regulator of FSOC designated firms) to identify with specificity concerns regarding activities in the insurance sector or individual firms that give rise to such risks. We are committed to taking action to address such risks when identified, communicated to us, and where action is warranted and within the scope of our regulatory authorities. However, we have serious concerns that the present structure and operations of the FSOC undermine our ability to contribute to FSOC's important work.

First, the role of the state insurance regulator should be elevated within the Council and the Treasury Department should recommend to Congress that the state insurance regulator representative be given a vote in a manner that complies with the appointments clause of the U.S. Constitution. States are the primary regulators of the insurance sector, yet are the only primary functional regulators without a vote. States have the necessary expertise and information regarding the sector to inform FSOC's risk monitoring work and help identify any systemic risks that impact the insurance sector. In addition, states are the only members of the Council that can commit to take regulatory action across the insurance sector in response to calls for a coordinated approach to address any risks that the Council may identify or other relevant regulatory concerns that may arise.[3]

Second, even under the present construct, the states have been impermissibly constrained in our ability to contribute to the FSOC process. Our FSOC representative and his limited staff have

[2] While outside the scope of this report and this submission, the NAIC has had serious concerns with the implementation of the FSOC's designation authority and would like the opportunity to discuss those concerns either directly or through our FSOC representative, Director Peter Hartt of the New Jersey Department of Banking and Insurance.

[3] The Federal Reserve has limited regulatory authority within the insurance sector as they only regulate FSOC designated firms and Depository Institution Holding Companies with insurance operations. Neither the Independent Member with Insurance Expertise nor the Federal Insurance Office have any regulatory authorities over the insurance sector.

been prohibited from sharing information relating to the discussions at FSOC including any risks being discussed that may impact insurance. As described above, the insurance regulatory system is a 56 state and territory system that relies extensively on the network of regulators within the state insurance departments and the resources provided by the NAIC. Prohibiting the state insurance regulators' FSOC representative and his staff from fully collaborating with their colleagues within the states and the NAIC to assist FSOC's work is antithetical to the operation of the state based system of insurance regulation. This prohibition is unique to state regulators and one that has not been placed on the federal members of the Council, who can enlist the resources and expertise of their entire agencies. While we understand structures may need to be put in place to ensure confidentiality, it is to the detriment of FSOC's work, the insurance sector, and the U.S. to prohibit state insurance regulators from bringing the entire scope of their resources to bear for purposes of FSOC's work.

Third, while the FSOC non-bank designation process is outside the scope of this report, we believe that, as an alternative to firm specific designation, the FSOC should identify any specific systemic risks or concerns (whether within a firm or the sector), and work with regulators to address such concerns. In fact, the concerns that have been brought to our attention to date are issues that state regulators were already addressing through improvements to existing regulatory authorities including establishing a captive reinsurance framework and requiring more securities lending disclosures. In our view, designation is a drastic measure and should only be used in the most extraordinary cases, if at all. We believe U.S. financial stability would be better served if the FSOC and regulators work together to resolve concerns through traditional regulatory authorities. Indeed, state insurance regulators are actively working to further enhance our macroprudential toolkit.

The Role of the Federal Insurance Office

The Dodd-Frank Act established the Federal Insurance Office (FIO) within the Treasury Department to advise the Secretary on insurance related policy, monitor the insurance sector, represent the U.S. Treasury Department in certain international forums, and negotiate covered agreements. To be clear, the NAIC believes that insurance expertise within the Treasury Department or elsewhere within the federal government is necessary given the importance of insurance to our economy. However, a standalone office operating under the imprimatur of its own authorizing statute is not. The roles for which FIO could provide some value (e.g., providing 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 the Treasury Department before FIO's creation.

FIO historically has complicated our engagement internationally, particularly in regulatory standard-setting, and created confusion as to the respective roles of FIO, state insurance regulators, and the Federal Reserve (to the extent it is involved in the regulation of an insurer). Prior to the establishment of FIO, certain insurance sector participants have suggested 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 FIO's substantial involvement at the International Association of Insurance Supervisors

(IAIS) during 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.

Some have argued that FIO's existence puts pressure on the states to make necessary regulatory improvements. Nothing could be further from the truth. The regulatory enhancements that have been made the past nine years were put in place despite FIO, not because of it, and are more a product of recognition by state insurance regulators that certain changes were necessary in light of our experience during the financial crisis. While it may be appropriate to ensure the continuation of some functions of the office, we urge the Treasury Department to recommend to Congress that the authorizing statute be repealed and any statutorily granted authorities that are appropriate to preserve be vested in the Secretary, who has the inherent authority to delegate those authorities as he or she wishes.

Until such steps are taken by Congress, we urge the Treasury Department to refocus the work and day-to-day mandate of FIO. First, FIO should provide policy advice to the Treasury Department on insurance matters, particularly advising the Secretary on insurance related matters before the FSOC as well as federally run insurance programs (including assisting the Secretary in administering the Terrorism Risk Insurance Program). Second, its domestic mission should focus almost exclusively on facilitating insurance sector perspectives including those of regulators, industry, and policyholders on the work of the Treasury Department and other federal agencies. For example, given the significant impact on the life insurance sector, we assume and would have expected that FIO was involved in the Department of Labor's work to develop its fiduciary rule yet state insurance regulators were not consulted until after the proposal was released. Given the regulatory overlap between the ERISA regime and insurance regulation, particularly as it relates to annuity sales, FIO should have been proactive in ensuring the Department of Labor consulted with the states.

Third, FIO's international role should be refocused. FIO should defer to regulators on all international regulatory standard setting matters, particularly at the IAIS (similar to deference afforded to banking regulators within the Basel Committee and securities regulators within the International Organization of Securities Commissions), with perhaps the exception of certain financial stability matters that would be within the province of the FSOC domestically. With respect to those issues, insurance regulators, FIO and the Federal Reserve should work in a coordinated manner to advance the respective perspectives of the states and the federal government. Such an approach would be consistent with congressional delegation of insurance regulation to the states under the McCarran-Ferguson Act as well as the administration's core principle to advance American interests in international financial regulatory negotiations and meetings. Fourth, FIO should work far more cooperatively with the NAIC and states on information gathering and data calls. Historically, FIO has identified the need for certain information to carry out its functions but, in most cases, so do the regulators. In at least one case where the regulators and FIO both had an interest in information (e.g., information on the terrorism risk insurance market), the NAIC and state regulators offered to collect and process it (including any FIO requested data elements) yet FIO refused. In order to reduce burden on industry, FIO should be instructed to work with the NAIC to establish formal mechanisms whereby state insurance regulators can discuss overlapping information needs, whether the needs can be fulfilled by the NAIC and state regulators in the first instance, and, if so, identify the appropriate data elements to fulfill the respective needs of regulators and the Treasury Department.

Finally, the Treasury Department and the United States Trade Representative (USTR) have announced their intention to sign the Bilateral Agreement between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance (Covered Agreement) and to issue a U.S. policy statement on implementation in the coming weeks. We very much appreciate the constructive engagement that the Treasury Department has had with the NAIC leading up to the announcement and your commitment to resolve concerns with state insurance regulators. While it isn't clear that future covered agreements will be necessary since the agreement with the EU was the product of fairly unique circumstances, improvements can be made that would ensure a smoother process and perhaps better outcomes for the U.S. going forward. First, state insurance regulators should be included in the negotiation process and should be able to consult with their fellow regulators. Unfortunately, during this negotiation, only a few regulators were permitted to participate and they could not share information and obtain reactions from the other states until after the agreement was finalized and announced. This made the evaluative process rockier and limited the ability to achieve buy-in from states in advance of the negotiations being concluded. In addition, the process would benefit from more stakeholder involvement throughout the negotiations and formal mechanisms for doing so, including a notice and comment period on the proposed agreement and its framework. Last, and certainly not least (and recognizing that statutory changes would be required), Congress should have more formal mechanisms for weighing in, including perhaps voting on the proposed agreement. It is odd to require similar approval for other international agreements that could have preemptive or legally binding effect, but not this one, and for foreign jurisdictions to require the approval by their own legislative bodies, but for the U.S. not to do so.

Federal Regulatory Agency Involvement in Insurance

As referenced above, the NAIC recognizes insurers directly engage in activities regulated by others or are involved in financial ecosystems that involve the regulation of other financial sector participants that could impact insurance markets. However, we have witnessed during the past several years other financial regulatory agencies engaging in activities in their sectors that impact insurance and by extension, our regulation of the sector. Notwithstanding our efforts to work with federal agencies, we have, at times been quite disappointed in the federal financial regulatory agencies' unwillingness to coordinate with the NAIC and state insurance regulators. This is critical in cases where there may be overlapping regulatory mandates or a need to exchange information with insurance regulators to reduce the likelihood of burdensome, duplicative requests on the insurance industry. For example, as you are aware, the Federal Reserve regulates depository institution holding companies as well as firms designated by the FSOC. State insurance regulators remain the functional regulators of any insurance operating entities, a role that is not preempted by the statutes that provided the Federal Reserve its authorities. As a general matter, over time, coordination on supervision has improved quite a bit with the Federal Reserve. However, our experiences continue to vary depending on the supervisors involved and the Federal Reserve Bank responsible for such regulation. Though the complaints have become less frequent, states have found that certain Federal Reserve supervisors have at times not been forthcoming in sharing information and the exchange has been one-sided, with the states providing more than the Federal Reserve.

The same can be said for regulatory policy coordination. For example, the Federal Reserve is presently working on capital rules (among other regulations) for the insurance firms that it regulates that are substantially engaged in insurance operations. At the same time, the NAIC is working on developing a group capital analytical tool. While not historically the practice of the Federal Reserve, the whole insurance sector would benefit from the Federal Reserve and NAIC working together on this and other regulatory policy initiatives that impact the companies we collectively regulate. We were pleased that the Federal Reserve has accepted our invitation to coordinate on group capital approaches. We hope that such coordination will be robust and be a model for coordination in other areas. Such coordination will help reduce industry burden, avoid duplicative efforts, and limit inconsistency among a firm's regulators. To the extent other regulators are involved in the regulation of insurance companies or their policies could impact the insurance sector, we urge the Treasury Department to make a similar recommendation. For example, while our experience working with Federal Housing Finance Agency (FHFA) has generally been positive, we have historical concerns with the FHFA's development of Fannie and Freddie's mortgage insurance standards and their potential conflict with state-mandated solvency rules over mortgage insurers. Another example is the Consumer Financial Protection Bureau (CFPB) has taken enforcement actions against mortgage insurance companies and never provided advance notice to their primary regulators.

Specifically, with respect to the Department of Labor's Fiduciary Rule, the Department of Labor did not consult with state insurance regulators until after the proposal had been released, even though the states have primary jurisdiction over the sales of all insurance products irrespective of type or sales channel. This rule can have significant impact on the insurance marketplace and as the primary regulators of the sector, state insurance regulators should have been consulted throughout the process not after a proposal had already been developed. Since that time, the relationship has improved and we appreciate recent overtures by the Department of Labor to coordinate with state insurance regulators regarding the rule's implementation and its reexamination, and we hope that Department of Labor (as well as the U.S. Securities and Exchange Commission) will work with the NAIC as we proceed with a review of our own regulations regarding annuity sales.

In sum, though federal agency/state regulator coordination has improved to some degree and notwithstanding our commitment to coordinate with other financial regulatory agencies, improvements can be made. To reduce regulatory burdens on insurance companies and "make regulation, more efficient, effective, and appropriately tailored," the Treasury Department should recommend that federal agencies including, but not limited to, the federal financial regulatory agencies and the Department of Labor work with state insurance regulators to improve supervisory information sharing and regulatory policy coordination protocols.

Federal Insurance Programs

In addition to its involvement in the areas described above, historically, the federal government has administered certain programs that provide insurance products that the private market is unwilling or unable to write. These programs provide an important service to American businesses and consumers and we urge their continuation, though we believe improvements can be made as set forth below.

National Flood Insurance Program (NFIP)

State insurance regulators support the NFIP and have continually encouraged its long-term reauthorization. Through the NAIC, we formulated guiding principles for the 2017 NFIP reauthorization that focus on maintaining a stable program to provide certainty for policyholders while encouraging greater growth in the private flood insurance market as a complement to the NFIP. We support efforts to facilitate the growth of a state-regulated private flood insurance market to help provide consumers with more choices and coverage potentially at more affordable prices. While the NFIP has served as the primary source of flood coverage, more sophisticated risk mapping and modeling has developed in recent years and is generating new interest among private insurers to provide such coverage. Facilitating the entry of additional carriers into the market will provide consumers with access to additional options for flood insurance products. Over time, this additional competition and shift of risk from a federal program to the private market could help lessen the exposure of U.S. taxpayers to the types of catastrophic flood losses that now reside as unpaid debt on the NFIP's books.

Terrorism Risk Insurance Act (TRIA)

State insurance regulators have supported TRIA since its inception and its subsequent reauthorizations. A federal partnership with private insurance markets provides security by minimizing market disruptions and ensuring the widespread availability and affordability of property and casualty insurance for terrorism risks. This public-private partnership ensures that insurers bear primary financial responsibility for losses from terrorism and must make the coverage available, while effectively capping the magnitude of losses and recouping federal funds if they are expended. TRIA is not a case of the federal government crowding out the private market, but rather it fosters the existence of a broader market for risks that would otherwise be largely uninsured, or more likely, borne by taxpayers. The availability of TRIA coverage helps provide economic stability to commercial policyholders, lenders, builders, and the businesses that operate in areas vulnerable to a terrorist attack. Given the difficulty in accurately determining the frequency, severity, and potential loss costs of a terrorist attack, state insurance regulators have not seen evidence to suggest that the insurance marketplace is capable or willing to voluntarily take on a substantial portion of terrorism risk absent a federal backstop. With regard to TRIA data collection efforts, we recognize that state insurance regulators and the Treasury Department each have a distinct obligation to obtain terrorism risk insurance data and we encourage the Treasury Department to increase its collaboration with us to find ways to work together to address our respective data collection needs in a coordinated manner. The states continue to move forward with our terrorism risk insurance data call, remain willing to incorporate any additional data elements the Treasury Department may require, and to share the data that is collected.

<u>International Standards and Processes</u>

The NAIC was a founding member of the IAIS in 1994 and served as its administrative secretariat during its formative years to encourage dialogue, information sharing, and cooperation. Every member of the NAIC – the 50 states, the District of Columbia and the five U.S. territories – are members of the IAIS, in addition to the NAIC itself. Even before the financial crisis in 2008, the NAIC and its members were actively engaged in the IAIS and supportive of the process to establish Insurance Core Principles (ICPs) as non-binding best practices to assist regulators and enhance cooperation worldwide. More recently, we have worked closely with the Treasury Department and the Federal Reserve as a team to promote and protect U.S. interests.

Generally, state regulators have advocated for flexibility and simplicity over prescription and complexity in the IAIS standard setting process. Our state-based system is focused on policyholder protection and maintaining stable markets for consumers and insurers. We encourage and support balanced cost-effective insurance regulation throughout the world, with great respect for local practices that can achieve positive outcomes. We are committed to assisting emerging and developing markets build regulatory and supervisory capacity to support stable and competitive markets where U.S. companies are able to compete and provide expertise to enhance local economies and financial security for businesses and individuals. Our track record of positive results for policyholders and insurers remains strong and we have deep experience cooperating, coordinating and collaborating with regulators from around the world. Therefore, consistent with the delegation by Congress under the McCarran-Ferguson Act, states should be afforded deference on international insurance regulatory matters at any international regulatory standard-setting body including with respect to U.S. insurance regulatory policy positions, as well as international committee membership and leadership.

We are also committed to close coordination and collaboration with U.S. authorities to the maximum extent possible. It is important to avoid debating domestic policy matters at the IAIS, and we support working to achieve consensus within the U.S. delegation before IAIS engagements whenever possible. We are able to provide leadership in the coordination of U.S. engagement in IAIS activities and are committed to ensuring strong U.S. influence in the international standard-setting process. Furthermore, it is critical to avoid any actions or statements by U.S. members at the IAIS that might undermine current U.S. policies or seek to influence U.S. policy measures, regulatory actions, or congressional reforms on insurance matters. This is particularly relevant at the Financial Stability Board (FSB), and we request to be included directly in any FSB discussion on insurance. Together, these changes would better "advance American interests in international financial regulatory negotiations" and provide for greater consistency with the administration's core principles for financial regulation.

Separate from regulatory standard setting, there are number of areas where the federal government should take the lead in international discussions where it is more appropriate and consistent with federal authority. However, even in those instances, if there are issues relating to insurance and insurance regulation, Treasury, USTR, the Department of Commerce and other agencies should seek to consult with and include state regulators wherever possible. As an example, Treasury's Strategic and Economic Dialogue (S&ED) with China and the Financial Markets Regulatory Dialogue (FMRD) typically include our regulatory counterparts from those jurisdictions, and in the past state regulators were given a role to play in those meetings. In recent years, though, state regulators have either not been included or relegated to an observer role. It is in the best interest of U.S. insurers and policyholders to have their primary regulators more scoped into these international dialogues.

Retirement Security

Retirement security encompasses a broad spectrum of financial tools, including insurance-related products and services. This includes life insurance and annuities, long-term care insurance and the manner in which insurance products are marketed and sold to consumers. Our goal is to help consumers handle a wide array of issues related to their retirement. The NAIC has embarked on a Retirement Security Initiative broken into three categories: education, consumer protection and innovation.

With respect to education, state insurance regulators encourage consumers to collect information, ask questions and check with their state insurance department before buying or changing policies. The NAIC's Insure U consumer program offers an array of tools to help consumers make smart insurance choices by providing information specific to life stage, life event or policy type. The NAIC is helping consumers understand insurance implications of retirement planning at all life stages through a microsite that pulls together our consumer outreach into one easy to use online resource. The NAIC is also developing additional materials to help educate consumers about financial literacy. Through partnerships with Jump$tart and other associations, we are working to enhance outreach and materials to help consumers make informed financial decisions. The NAIC has also created the Lost Life Policy Locator application to connect consumers to lost policies. The tool has already helped many consumers receive money owed from life insurance companies.

The second platform of the Retirement Security Initiative is consumer protection. As described above, state insurance regulators diligently monitor the marketplace and address fraud, and other unlawful practices affecting consumers. Working through the NAIC, we monitor current laws and regulations to ensure they are consistent with public policy needs. We work with consumer advocacy groups, as well as other state and federal partners to shape policies that evolve with the ever-changing insurance marketplace. In this area, our committees are reviewing and updating our model acts and regulations, and pushing for adoption in our states. Many of these models focus on annuities, from suitability and disclosure to senior specific designations and certifications. Updates to these models and ultimately adoption into state laws will better protect individuals as they reach retirement age.

The third platform is innovation. There is no greater area of the insurance sector in need of innovation than with long-term care insurance. As part of a more comprehensive look at these products, including the challenges facing legacy policies, the NAIC's Long-Term Care Innovation Subgroup is looking at ways to remove barriers to product offerings while ensuring consumers remain protected. Our Center for Insurance Policy and Research (CIPR) released a study last year on "The State of Long-Term Care Insurance: The Market, Challenges and Future Innovations," which provided several suggestions for policymakers to consider. The NAIC is also working to identify and address areas to enhance laws and regulations to promote and encourage innovation in the insurance industry. In this regard, the NAIC is working to understand how new technologies impact consumers while also exploring how they can be used to benefit consumers and the insurance industry. The NAIC is committed to responding to changes in the insurance market, exploring how to support products that best serve consumers, monitoring market regulatory process for continuous improvement and striving to ensure the availability and affordability of insurance. Our goal with these measures is to protect consumers, allow industry to develop products that meet consumer needs, and better position individuals for retirement.

Cyber and Data Security

As cybersecurity and associated regulatory concerns stretch beyond the insurance sector, we support coordination among federal and state financial regulators to strive for consistency to align cyber regulatory guidance where possible and appropriate. As part of these collaborative efforts, the NAIC engages with financial regulators through the Treasury Department's Financial and Banking Information Infrastructure Committee (FBIIC) to facilitate communication and consider ways to effectively coordinate regulatory approaches to managing and evaluating cybersecurity risk. We also participate in the Executive Branch and Independent Agency Regulatory Cybersecurity Forum where we meet with other regulators to discuss best practices and common regulatory approaches to cybersecurity challenges across different sectors of the U.S. economy.

For our part, state insurance regulators continue to focus on enhancing data security expectations to ensure the insurers and producers we regulate are adequately protecting the many kinds of highly sensitive consumer financial and health information they retain. The NAIC formed a cybersecurity task force to coordinate state insurance regulators' efforts to address cybersecurity issues, including the creation of the Principles for Effective Cybersecurity Insurance Regulatory Guidance, financial examination protocol updates, cyber liability market data collection through the Annual Statement Supplement for Cybersecurity, and the NAIC Roadmap for Cybersecurity Consumer Protections. State insurance regulators are collaborating to develop an Insurance Data Security Model Law to establish standards for data security, investigation, and data breach notification.

In addition, insurance regulators are responsible for the regulation of the cyber insurance market. When it comes to regulating cyber insurance, policies and insurers are scrutinized just as closely as other insurance lines. While the complexity of cyber insurance policies and new product language will present some novel issues, policy forms and rates are still subject to review to ensure the contracts are reasonable and not contrary to state laws. Insurers providing cybersecurity insurance are subject to the same solvency regime as other insurers. Insurance regulators also have market conduct authorities to examine insurers and policies as well as significant enforcement powers to curtail misconduct. As a still nascent market for coverage, accurately assessing exposure or the size of the cybersecurity insurance market is a work in progress. In light of the uncertainty and many questions surrounding these products and the market, the NAIC developed a new mandatory data supplement. This supplement requires all insurance carriers writing either identity theft insurance or cybersecurity insurance to report on their claims, premiums, losses, expenses, and in-force policies in these areas. With this data, regulators will be able to more definitively ascertain the size of the market, and identify trends that will inform whether more tailored regulation is necessary.

The expansion of cyber risks and the growth of the cybersecurity insurance market are a tremendous opportunity for the insurance sector to lead in the development of cyber-hygiene across our national infrastructure. Insurance has a long history of driving best practices and standardization. It creates economic incentives through the pricing of products, and the underwriting process can test risk management techniques, and encourage policyholders to make their businesses more secure. As insurers develop more sophisticated tools for underwriting and pricing, state regulators will continue to monitor and study cybersecurity products, always mindful that our fundamental commitment is to ensure that policyholders are protected and treated fairly by financially sound insurance companies. As policymakers and stakeholders increasingly look at insurance as part of the cyber risk management framework, there is great potential, but we would urge caution to allow the insurance market to grow and evolve organically and be wary of policies that artificially pressure the supply or demand for this product. Insurance carriers writing these products are often the same carriers the economy relies upon to cover liability losses, hurricane damage, or other costly events that can put pressure on solvency. Insurance regulators must balance the industry’s exposure to this product with all the other risks the industry is asked to absorb.

Conclusion

As we noted at the outset, the focus of our comments is largely external to our system with a focus on federal involvement and certain key issue areas that have significant shared responsibility between state and federal governments, like retirement security and cyber security, but we are happy to respond to any questions you might have about elements of state regulation. Thank you for the opportunity to provide this submission. Should you require more detailed information regarding any of the issues discussed herein or have any questions, please don’t hesitate to contact Ethan Sonnichsen, Managing Director of Government Relations, at esonnichsen@naic.org or 202-471-3980 or Mark Sagat, Assistant Director, Financial Policy and Legislation, at msagat@naic.org or 202-471-3987.

Sincerely,

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