

Statement for the Record
From the National Association of Insurance Commissioners
for the House Financial Services Committee
Subcommittee on Housing and Insurance
Hearing on “Examining Insurance for Nonprofit Organizations”
September 28, 2017

Chairman Duffy, Ranking Member Cleaver, and members of the subcommittee, the National Association of Insurance Commissioners (NAIC)¹ appreciates the opportunity to submit this written statement for the September 28, 2017 hearing on “Examining Insurance for Nonprofit Organizations.”

As state insurance regulators, our focus is on the dual objectives of protecting insurance consumers and ensuring competitive and stable insurance markets in our states. We assure the solvency and reliability of insurers, promote availability and affordability of insurance coverage, and enforce fair and equitable treatment of insurance consumers. We recognize the importance of exploring nonprofit organizations’ access to insurance products and appreciate the subcommittee’s attention to these issues. As the subcommittee examines these matters, we urge caution and would oppose legislative proposals that seek to expand the scope of the Liability Risk Retention Act (LRRRA) to allow Risk Retention Groups (RRGs) to write commercial property insurance.

During the 1980s, the availability of commercial liability insurance became severely restricted. The purpose of the LRRRA was to address this availability crisis by limiting the regulation of RRGs. RRGs have different regulatory and financial solvency requirements that are designed to address concerns with the availability for liability coverage as compared to admitted market requirements for property coverage, which is widely available. The LRRRA contains limitations on the regulatory authority of state insurance commissioners. An RRG is regulated almost exclusively by its domiciliary state regulator and there are prohibitions against other non-domiciliary states. A traditional admitted insurer must receive a license and submit to regulation from every state where it writes business. By comparison, admitted insurers must comply with all consumer protection laws in all states where they do business while RRGs are only required to comply with the laws of their domiciliary state and the unfair claim settlement practices laws and certain laws related to deceptive, false or fraudulent practices in their non-domiciliary states. In the admitted market, the regulatory oversight of the financial solvency of an insurer is generally the responsibility of the domiciliary state, but oversight is enhanced by the ability of any state to examine a non-domiciliary admitted insurer. Further, the LRRRA prohibits RRGs from participating in state guaranty funds, which serve as a backstop and protect policyholders of property and casualty

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.

insurance. This is particularly concerning as RRGs have historically had a higher rate of insolvencies when compared to admitted insurers.

While such an approach may have been appropriate in the 1980s when the liability insurance market faced dramatic increases in commercial liability insurance premiums and reductions in coverage availability, we are not aware of such a large scale crisis in the commercial property insurance market today that would merit the expansion of the LRRRA and preemption of state insurance regulatory laws that are designed to protect policyholders. At the NAIC's 2015 Fall National Meeting, insurance regulators heard a presentation regarding the availability of certain lines of property coverage for nonprofits. However, no compelling evidence was presented that suggested the existence of a widespread availability crisis of property coverage for nonprofits that might merit broad based state regulatory action, let alone the drastic remedy of federal preemption.

The NAIC is concerned that allowing RRGs to sell property coverage could create more risks for the RRGs and ultimately, their insureds. The current regulatory framework for financial oversight of RRGs was designed with the more limited purpose of promoting the availability of liability coverage not for protecting policyholders of property insurance. The nature of this framework coupled with the lack of state guaranty fund protection, could expose nonprofit organizations and those who rely upon them to unnecessary risks. We encourage RRGs interested in expanding into writing commercial property coverage to explore converting to an admitted carrier, be subject to the same regulatory requirements as traditional admitted property and casualty insurers and compete with those insurers on a level playing field.

In conclusion, we are not currently aware of a large scale property insurance availability problem for nonprofit organizations. Even in the event such concerns develop or become imminent, expansion of the LRRRA is not an appropriate solution to the problem. Rather, we encourage any nonprofit policyholders that have difficulties with obtaining property coverage to bring them to the attention of state insurance regulators so we can seek to address such issues through appropriately tailored state-based regulatory solutions as we do with all other lines of insurance. We appreciate your consideration of our views and thank you for the opportunity to submit this written statement for the record.