

April 20, 2010

Dear Senator:

We write on behalf of the National Association of Insurance Commissioners (NAIC) to express our views on the S.3217, the Restoring American Financial Stability Act of 2010 (RAFSA). We commend the Congress for reexamining regulatory structures in light of the recent crisis. However, we urge Members to address those issues, gaps, or weaknesses exposed by actual events, and avoid unnecessary or counterproductive changes to healthy and functioning elements of the financial system.

State regulation of insurance has worked extremely well for consumers during the financial crisis, protecting policyholders from contagion risk and prohibiting insurance companies from engaging in the activities that crippled the financial sector. Indeed, while nearly 600 banks used funds from the Troubled Assets Relief Program (TARP), only three insurers received such assistance.

While we do not believe that the business of insurance typically presents systemic risk, the legislation nonetheless proposes a number of new systems that would impact insurance consumers and companies, and we therefore write to ensure that state insurance supervision is preserved, and not unintentionally undermined, within the framework of RAFSA.

Office of National Insurance (ONI)

The NAIC strongly urges the Senate to strike the Office of National Insurance language and replace it with the House-passed Federal Insurance Office (FIO) language. State insurance regulators worked closely with Members of the House, as well as consumer groups and the insurance industry, to carefully craft language to create a federal office with narrow authority to implement mutual recognition or equivalence agreements. The FIO approach ensures that the federal government has information and expertise on the insurance sector, provides that international agreements are subject to appropriate review and input, and protects against unnecessary preemption of state law. This issue is critical to state insurance regulators as the Department of the Treasury, for the first time, would have the power to make determinations on the preemption of state insurance measures.

Additionally, both the ONI and FIO language call on the office to conduct a study on ways to modernize insurance regulation. Empowering a new federal insurance office to make recommendations on whether its authority should be expanded is a self-fulfilling prophecy, and a clear conflict of interest. State insurance regulators have testified repeatedly before both the House and the Senate on efforts to modernize insurance regulation, and we would be happy to work with Congress on this matter. **If a study is necessary, we urge the Senate to request the study from an objective body, such as the Government Accountability Office (GAO).**

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Resolution Authority

Any new federal resolution mechanism should allow the states to continue to protect insurance policyholders of a troubled or failing insurance company through existing state receivership law and guaranty fund mechanisms. State insurance commissioners already have broad authority to seize troubled insurance companies to maximize the protection for consumers. We have experience walling off an insurance company or companies from the financial problems of a troubled holding company. Further, state guaranty funds protect policyholders from any shortfalls.

The state receivership system is different from federal bankruptcy law because it prioritizes the rights of policyholders and claimants over other (nonsecured) creditors. This system is funded through insurer assessments – without any federal dollars – thereby creating a strong industry incentive to manage risk and protect solvency. Any new federal mechanism should work in concert with this strong, existing system of resolution and assessment, and not duplicate or preempt it to the disadvantage of insurance consumers.

Financial Stability Oversight Council

A financial stability council that impacts insurance companies demands the input, expertise, and information resources of an acting insurance regulator. While we believe that the business of insurance is not likely to pose systemic risk because it is closely regulated for solvency with investment restrictions and low leverage, insurance is clearly an important sector of the financial system. The proposed financial stability council ultimately will make decisions and recommendations that impact insurance companies and insurance consumers. To ensure the credibility of decisions impacting the insurance sector, the council should have an active insurance regulator participating equally in those discussions and possessing a vote on matters affecting insurers.

Bureau of Consumer Financial Protection

The NAIC is encouraged that state insurance regulators' consumer protection efforts will not be duplicated or preempted by a new federal authority. Effective consumer protection is the hallmark of state regulation. A competing federal authority for insurance consumer protections, while perhaps well intended, will lead to regulatory arbitrage, gaps in protection, and ultimately preemption of state authority. Consequently, we support the Senate's approach (consistent with the House legislation) to leave insurance consumer protections with state regulators.

Federal Reserve Authority over Nonbank Companies

While we believe that the business of insurance is not likely to pose systemic risk, RAFSA nevertheless expands the Federal Reserve's authority over nonbank companies, including insurance companies. **The NAIC is encouraged that the Federal Reserve is required to rely on the existing reports and information from functional regulators, although we believe that such cooperation and consultation should also be extended to the development of any enhanced prudential standards or resolution plan.** We also believe it is important that the Federal Reserve and any federal financial regulators are authorized and encouraged to share information relevant to insurance with state regulators. A two-way sharing of information between the Federal Reserve and the functional regulators is crucial to the effective operation of any new regulatory regime.

Insurance regulators have extensive expertise in assessing insurer solvency and addressing insolvency issues, and, therefore, we should be actively involved as the Federal Reserve considers whether to examine any insurer under this new authority. By drawing upon the expertise of insurance regulators, the Federal Reserve can avoid adding a duplicative and burdensome layer of regulation. Furthermore, as this new authority requires the Federal Reserve to interact closely with the Financial Stability Oversight Council on enhanced prudential standards, we must again point out the clear need to include an active state insurance regulator on the Council in an appropriate capacity.

Annuity Regulation

The NAIC commends the Senate for including investor protections in Title IX that create a grant program to encourage states to adopt improved standards for annuity suitability and senior designations. The NAIC and state regulators continue to work diligently to address emerging issues concerning the regulation of annuity transactions. RAFSA will encourage states to adopt the NAIC's Suitability in Annuity Transactions Model Regulation and Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities. These models provide states additional tools to protect annuity consumers and the grants will allow states to invest in additional education, technology and staff resources to protect senior investors.

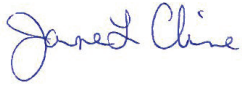
Nonadmitted and Reinsurance Reform

The proposed bill includes the Nonadmitted and Reinsurance Reform Act of 2010 (NRRA). The NAIC is supportive of the surplus lines portion of this legislation and of developing a common premium tax allocation system and providing a single point of contact for premium tax collection. We believe that the reinsurance portion is inadequate in addressing the full need for reinsurance reform. In particular, state regulators have worked to address ways to reduce collateral for reinsurers (a critical regulatory issue as the European Union modernizes its insurance solvency regime and seeks equivalence with the U.S.) and the current bill fails to address this core issue. The NAIC has drafted proposed federal legislation to address collateral and other issues related to the regulation of reinsurance. **The NAIC urges the Senate to work with states on a comprehensive reinsurance modernization solution based on draft NAIC legislation.**

Again, we commend the Congress for efforts to tackle the tremendous challenges presented by the financial crisis. Like our colleagues at the federal level and around the world, we have learned difficult lessons from the financial crisis, and we are actively working to improve our supervision of this critical industry. As the Senate moves toward adoption of comprehensive financial reform at the federal level, we ask that you consider our input and perspective to ensure that efforts to close gaps in regulation do not open new ones. Thank you for your consideration, and we look forward to working with you.

If you have any questions about our views, or would like specific legislative text to effectuate our recommendations, please contact Ethan Sonnichsen of the NAIC Washington Office at (202) 471-3990 or esonnich@naic.org.

Sincerely,



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