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

October 23, 2019

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Re: The Nonprofit Property Protection Act, H.R. 4523

Dear Chairwoman Waters and Ranking Member McHenry:

On behalf of the nation's state insurance regulators, we write in opposition to the Nonprofit Property Protection Act, H.R. 4523, which would expand the Liability Risk Retention Act (LRRA) to allow Risk Retention Groups (RRGs) to sell commercial property coverage for certain non-profit organizations. H.R. 4523 is unnecessary and would undermine critical insurance consumer protections for the most vulnerable of the commercial insured.

By way of background, during the 1980s, the availability of commercial liability insurance became severely restricted. The LRRA addressed this availability crisis by preempting the states and relaxing regulatory standards that otherwise would provide important protections to commercial insureds. An RRG is regulated almost exclusively by its domiciliary state regulator and, even though RRGs may operate in other states, those states' regulatory authority is significantly curtailed. By comparison, a traditional admitted insurer must receive a license and submit to regulation from every state where it writes business to ensure the policyholders of that state are protected. This coordinated multi-state approach limits the potential regulatory capture and a race to the bottom – a feature now missing from RRG oversight due to federal preemption. Not surprisingly, RRGs have historically had a higher insolvency rate when compared to admitted insurers. Further, RRGs are also prohibited from participating in state guaranty funds, which are similar in concept to the FDIC's deposit insurance fund, which means RRG policyholders are unprotected in the event of its failure.

While we recognize that H.R. 4523 requires RRGs seeking to sell coverage to nonprofits be subject to some additional solvency protections, the additional protections contained within the legislation fall short of the breadth and scope of the type of regulation that the admitted market is subject to. Notwithstanding these provisions, the NAIC remains concerned that the legislation 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 and be subject to the same regulatory requirements on a level playing field as traditional admitted property and casualty insurers.

Not only would the legislation create risks for insureds, we are not aware of a crisis in the commercial property insurance market today that would merit the expansion of the LRRA and preemption of state insurance consumer protections. While H.R. 4523 attempts to address this concern by only allowing RRGs to write commercial property coverage if the coverage is unavailable in the state, the criteria to demonstrate availability is exceedingly narrow and is not a true measure. The criteria are illusory, specifically designed to accomplish the real intent of the legislation, which is to allow RRGs to write such coverage wherever and whenever they want, with more limited regulatory oversight.

In conclusion, we believe this legislation preempts critical regulatory protections and we are not currently aware of a large-scale property insurance availability problem for nonprofit organizations that would merit such preemption. Even in the event such concerns develop or become imminent, expansion of the LRRA is not an appropriate solution to the problem. In such circumstances, we would encourage nonprofit policyholders that have difficulties with obtaining property coverage to contact their state's insurance department so we can seek to address such issues through appropriately tailored state-based regulatory solutions as we do with all other lines of insurance.

Thank you for consideration of our views and we urge you to oppose H.R. 4523. Should you have any questions, don't hesitate to reach out to Ethan Sonnichsen, Managing Director of Government Relations, at esonnichsen@naic.org or Mark Sagat, Assistant Director for Financial Policy and Legislation, at msagat@naic.org.

Sincerely,

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