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Capital Markets Regulatory Reform: Strengthening Investor Protection, Enhancing Oversight of Private Pools of Capital, and Creating a National Insurance Office

Committee on Financial Services
United States House of Representatives
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Chairman Frank, Ranking Member Bachus, and Members of the Committee, thank you for the opportunity to testify today on the proposed creation of a Federal Insurance Office within the Treasury Department. I am Janice Abraham, President and CEO of United Educators Insurance, A Reciprocal Risk Retention Group. We are owned and governed by the more than 1,160 educational institutions we insure, including public and private two- and four-year colleges and universities, independent elementary and secondary schools, educational associations and foundations, public school districts and pools; museums and cultural institutions. I am testifying today on behalf of the Property Casualty Insurers Association of America (PCI), which is the leading property-casualty insurance trade association in the United States, representing more than 1,000 insurers, the broadest cross-section of insurers of any national trade association.

The home, auto, and business insurance industry is healthy and competitive and the current system of regulating the industry is working relatively well. In the past five years, our insurance companies have weathered hurricanes Katrina, Rita and Ike in addition to handling their regular claims without having to ask for a government bailout. We're not broke, we didn't cause the current financial crisis, and we don't need a new federal oversight that may ultimately increase costs for consumers.

PCI appreciates the leadership of Representatives Kanjorski, Biggert, and other members of the committee who began this discussion in this Congress with their proposed Office of Insurance Information (OII) (H.R. 2609). While PCI has some concerns with that bill, it was in many ways more restrained and had a more targeted focus than the two subsequent proposals – the Administration's Office of National Insurance (ONI) and the most recent Kanjorski draft which amends the Administration proposal and renames the office as the Federal Insurance Office (FIO).

PCI supports responsible regulatory reforms that reflect principles of good insurance regulation. While we have not taken a position on proposals to create an office of insurance information, our members have concerns and questions about a greatly expanded federal insurance oversight office.

Functions

The FIO proposal would grant the federal insurance office a broad scope of powers that goes beyond the more limited and focused scope of the OII proposal. For example, the FIO would have the authority to "monitor all aspects of the insurance industry. . ." and to "perform such other related duties and authorities as may be assigned to the Secretary." This gives the Secretary discretion to delve into any insurance issue that can be said to relate in any way to any of the functions of the FIO. The intent of the initial proposals was to coordinate federal and international insurance policy. However the recent drafts create a potential for regulatory mission creep over time. The Committee should take care to ensure that the FIO's mission and powers are limited to addressing gaps in federal and international policymaking coordination.

Unnecessary and Burdensome Information Requests

One of the principal missions of the proposed federal insurance office is to gather information on and from the insurance industry. There are virtually no limits in the bill on the types and volume of information the Office may seek. While gathering information might sound like an innocuous activity, it can impose extraordinarily high costs on burdens on insurers – especially smaller insurers – who must comply with data requests. State regulators have some accountability in the information they gather, since they do so in pursuit of a regulatory function and with the additional responsibility of ensuring the solvency and stability of the marketplace. The proposed FIO has no such balancing accountability, mandate, or mission. Instead, as noted above the proposed language directs the Office to require information reporting to "monitor all aspects of the insurance industry" – an incredibly broad directive duplicating what the states already effectively implement and potentially opening the door to costly and overreaching federal information requests.

To its credit, the proposal does require the FIO to "coordinate" with state insurance regulators "to determine if the information to be collected is available from, or may be obtained in a timely manner by, such State insurance regulator or other agency." However, this does not definitively prohibit the FIO from demanding information that is publicly available or otherwise available from state regulators. The language should be tightened to require the FIO to seek and obtain any needed information from state insurance regulators and other public sources and permit the FIO to request information from insurers only if the information is not available from those sources.

The Kanjorski/Biggert OII bill rejects such excessive reporting requirements, stating that "the submission of any non-publicly available data and information to the Office shall be voluntary." PCI commends that approach to the Committee as it considers the new FIO proposal.

Duplicative Subpoena Authority

The new FIO proposal and the earlier Kanjorski/Biggert OII proposal wisely exclude any grant of subpoena power to the federal insurance office. For the reasons outlined below, PCI recommends that any legislation creating a national insurance office should do so as well.

The Administration's proposal includes exceedingly broad subpoena powers for the ONI. The power to issue a subpoena is one of the most potent powers the Congress can grant to a government agency. That power should therefore be granted very cautiously and only in circumstances where it is clearly justified, appropriately limited, and where the need is compelling and outweighs the potential for abuse. The proposed ONI subpoena power exceeds any other subpoena power granted to Treasury and is particularly broad and unlimited for a non-regulator.

As is typical of most agencies, Treasury's current subpoena powers generally fall into three categories: (1) formal administrative proceedings; (2) criminal or civil investigations and enforcement of laws/regulations; and (3) Inspector General investigative powers.[1] The subpoena power proposed to be granted in Section 313 (allowing the ONI to require insurers and their affiliates to submit information) exceeds any of the above categories and is not constrained in any way other than that the ONI must believe that the information it wants is relevant to its very broad mission that includes "monitoring all aspects of the insurance industry." No suspicion of criminal or civil violations of a law or regulation is required and no formal administrative proceeding must be initiated.

[1] U. S. Department of Justice, Office of Legal Policy, *Report to Congress on the Use of Administrative Subpoena Authorities by Executive Branch Agencies and Entities*, (2001).

The proposed ONI subpoenas are particularly extraordinary since Administration has specifically stated that the ONI would not be an insurance regulator. Thus, as a non-regulatory entity, it would be inappropriate to grant the ONI subpoena power.

Imposing an additional layer of subpoena authority is also unnecessary, because it would duplicate existing powers that state insurance regulators already have to obtain information and data from insurers, either by subpoena or otherwise. (See, e.g., NAIC Model Law on Examinations, NAIC Insurer Receivership Model Act; NAIC Unfair Trade Practices Model Act). Indeed, as noted above, Section 313(e) (4) of the Administration proposal requires the ONI to coordinate with state insurance regulators and other agencies on the collection of information from insurers. In addition to their subpoena power, state insurance regulators have the ability to withhold or revoke licenses or to take other disciplinary action against uncooperative insurers. It is unnecessary and inappropriate to grant ONI subpoena powers that: (1) are virtually unlimited; (2) apply in circumstances outside of those for which subpoena powers are typically granted to Treasury; and (3) duplicate subpoena powers already held at the state level.

Due Process – Ensure Accountability on Preempted Law

Under the Administration proposal, the FIO can preempt state law if the FIO determines that the state law: (1) directly or indirectly treats a non-U.S. insurer that is subject to an International Insurance Agreement on Prudential Measures (IIAPM) less favorably than it treats a U.S. insurer in that state; and (2) is inconsistent with an IIAPM. Before making such a determination, the FIO is required to provide notice and an opportunity for public comment. Other than a requirement that the FIO must consider all comments received and notify states of determinations of inconsistency, there is no check on the FIO's preemptive

power whatsoever. Thus, the FIO would have substantial power to preempt state law without being accountable for its decisions in any significant way.

The bipartisan Congressional bill by Representatives Kanjorski and Biggert proposed a number of additional checks on OII power, and we believe that those additional prudent limitations should be included in any FIO legislation that moves forward. Most importantly: (1) states and other aggrieved parties should have the right to appeal "determinations of inconsistency"; and (2) determinations of inconsistency and preemption should be expressly subject to the Administrative Procedures Act and to judicial review.

Small Insurers

The information demands that the FIO can impose without limit on insurers have the potential to impose tremendous burdens on all insurers. These burdens can be especially crushing for small insurers. We are pleased that the Administration has suggested considering a small insurer exception. However, the FIO is not required to adopt a small insurer exception, and the FIO gets to determine what the threshold should be. We recommend that the exception for small insurers be made explicit, with a definition of "small insurer" included reflecting a threshold of at least several billion dollars in direct written premium, indexed for market growth, or perhaps a similar measure tied to market capitalization. We would be pleased to work further with your staff to help develop an appropriate and workable definition. We would also note that the bipartisan Congressional OII bill does not impose such costly information demands on insurers, specifying that submission of non-public information was voluntary.

Negotiation of International Agreements

The Administration proposal would authorize the Treasury, assisted by the new FIO, to negotiate and enter into International Insurance Agreements on Prudential Measures (IIAPMs). This would be coupled with FIO's proposed power to preempt state measures deemed to be inconsistent with such IIAPMs. While it may be appropriate for a federal insurance office to coordinate with state regulators on matters of international interest, the proposed federal agreement negotiation and state law preemption powers would permit Treasury and the FIO to preempt current state reinsurance collateral requirements for overseas reinsurers – a key solvency regulatory tool. Elsewhere in our testimony, we suggest a more collaborative role for the FIO in which it would liaise with state regulators on matters of national and international concern and promote state uniformity in key areas, but refrain from usurping state regulatory authority.

FIO Should Facilitate State Uniformity

We have outlined above the ways in which we believe the functions of the proposed FIO are overly broad. However, the Committee may wish to consider other potential functions not included in existing drafts that could, if properly limited, assist in a constructive, collaborative way in reaching the goal of greater uniformity in state insurance laws and regulations. PCI sees positive potential to the FIO if its scope were refocused on the unique international trade, advisory, and coordinating roles suggested by the bipartisan Congressional bill. The FIO could also serve as a liaison to help encourage more efficient uniformity in state regulation. Without such limits the Office may suffer potential federal agency mission creep over time, far exceeding original Congressional intent.

Conclusion

PCI has already shared with Committee staff suggested amendments to the FIO legislation that would accomplish many of the things we are recommending today, as well as a technical amendment to limit Treasury’s

authority to exercise preemption powers with respect to International Insurance Agreements it enters into beyond the preemption powers granted to the FIO. We appreciate the Committee's hard work and diligent consideration of this issue and especially the joint leadership of Representatives Kanjorski and Biggert. Although PCI has strong concerns about the current legislative FIO draft, we look forward to working with the Committee on addressing those concerns consistent with past Committee leadership efforts.

We thank the Committee for the opportunity to offer our views and would be pleased to provide any additional information or assistance the Committee may require.