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H.R. 5840, THE INSURANCE INFORMATION ACT OF 2008

HEARING

BEFORE THE

SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE, AND GOVERNMENT SPONSORED ENTERPRISES

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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H.R. 5840, THE INSURANCE INFORMATION ACT OF 2008

Tuesday, June 10, 2008

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CAPITAL MARKETS,
INSURANCE, AND GOVERNMENT
SPONSORED ENTERPRISES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:08 a.m., in room 2128, Rayburn House Office Building, Hon. Paul E. Kanjorski [chairman of the subcommittee] presiding.

Members present: Representatives Kanjorski, Sherman, Moore of Kansas, Capuano, Hinojosa, McCarthy, Baca, Miller of North Carolina, Scott, Bean, Klein, Murphy, Donnelly; Pryce, Castle, Manzullo, Royce, Capito, Brown-Waite, Feeney, Davis of Kentucky, and Campbell.

Chairman KANJORSKI. This hearing of the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises will come to order. Without objection, all members' opening statements will be made a part of the record.

Good morning. We meet today to discuss H.R. 5840, the Insurance Information Act of 2008. Ranking Member Deborah Pryce, Congressman Dennis Moore, Congresswoman Melissa Bean, and Congressman Ed Royce joined me in introducing this legislation in mid-April. I would like to thank each of the original cosponsors for their support.

H.R. 5840 promotes an idea which I have long held, and which I incorporated into the Financial Services Committee's oversight plan for the 110th Congress: that the Federal Government should have an in-house expert on insurance policy matters. To that end, the bill would create an Office of Insurance Information within the Treasury Department.

At a private briefing between Members of Congress and the Federal financial regulators shortly after the September 11th terrorist attacks, it became very clear to me that the Federal Government lacks needed expertise on insurance policy. Evidenced by the recent debates on catastrophic insurance, I suspect that others came to a similar conclusion in the wake of Hurricane Katrina. Moreover, the ongoing troubles in the bond insurance marketplace have highlighted the fact that insurance is a financial product with significant implications for the broader national economy.

As such, the Federal Government should have a deep knowledge base on the insurance industry. We need to understand how the in-

dustry functions. We need to ascertain its relationship to other sectors of the financial marketplace. We need to appreciate its importance in our economy. The establishment of an in-house information resource to address these issues will ultimately help us to construct better policies, better rules, and better laws.

Recently, I met with a former senior official who worked at the Treasury Department during 2001. From this conversation, I learned that there were only two staffers working on insurance issues at that time. In a time of crisis, this lack of in-house expertise was troubling. Even with the passage of the Terrorism Risk Insurance Act, we now have less than 10 staffers dedicated to insurance issues, and their focus is very limited.

The same former Treasury official thought that it made sense to create an Office of Insurance Information in the Treasury Department. Moreover, this individual believes that such an Office "would have been helpful" in the aftermath of September 11th. Such an internal resource would have already had expertise in place, information available, and relationships developed to assist in the consideration of legislation like the Terrorism Risk Insurance Act. This Office might have even helped us to expedite the lengthy debates on the original TRIA law.

Since the addition of insurance to the Financial Services Committee's jurisdiction in 2001, we have held more than a dozen hearings on specific insurance proposals and broader industry issues. Because the insurance industry is a significant part of our economy, the Financial Services Committee will certainly continue to review insurance matters in the years ahead. The Office of Insurance Information created in this legislation and its independent voice will help the committee make better-informed decisions on future insurance proposals.

Additionally, the Office of Insurance Information will coordinate Federal efforts and establish Federal policy on international insurance matters. We live in a global, interconnected world. Insurance issues are increasingly the topic of international discussions. We need to recognize this fact. To promote better coordination, the Office would have the authority to determine whether State insurance measures are consistent with such policy. The Office would additionally have very limited preemption powers, with safeguards in place, with regard to this determination.

Before closing, I want to remind everyone that I have long discussed my desire to reach consensus on insurance reform measures. H.R. 5840 begins that work in earnest. In order to achieve broader agreement on the bill, I have worked since introducing the bill to make modifications, and will continue to refine the bill in the weeks ahead.

To help us in this task, today's witnesses will focus their comments on a discussion draft of a proposed managers amendment circulated last week. I understand that many of our witnesses today have suggestions to improve the legislation as we move forward. As always, the subcommittee is open to ideas to improve a bill. We want to work with all interested parties to maximize the growing consensus on this legislation.

In closing, I want to thank Ranking Member Pryce for joining me again in inviting the witnesses on a bipartisan basis. We look for-

ward to learning their views on our bill. I also look forward to moving H.R. 5840 through the legislative process in the near future.

I would like to recognize Ranking Member Pryce for her opening statement. Ms. Pryce?

Ms. PRYCE. Thank you very much, Chairman Kanjorski. Thank you for your continued leadership on this important issue of insurance reform in ushering H.R. 5840 forward today.

I am hopeful we will see other bills considered in due course, both the agent licensing bill and legislation to expand the Risk Retention Act. I believe these should move through this committee with little opposition. I am hopeful that we can find ourselves doing some work on those as well.

The Insurance Information Act we are discussing today will create a much-needed Federal voice for insurance. And above all else, above the political jockeying and strategizing and above the arguments that we are moving down the road to an optional Federal charter, above all that this bill is simply commonsense policy in action, removing a competitive disadvantage we currently face in insurance expertise at a Federal level, and filling a void at the table in global trade negotiations.

Under the current regulatory structure, insurance regulators in Europe and elsewhere are forced to deal with 54 different regulators representing different interests. While the NAIC attempts to serve as a conduit for the States, its structure as a nongovernmental body makes it impossible to serve as an effective voice on insurance regulation while serving the disparate needs of its members.

A Federal Office of Insurance Information with the responsibility of investigating and reporting on insurance issues, coordinating Federal policy, and establishing a role in trade negotiations, fills a void that has become ever more present in our global economy.

I know portions of this bill, in particular the scope of the preemption of State regulation, will be the focus of much of the debate here today. But I am hopeful that we will be able to move to a consensus bill quickly and get to mark-up.

I want to thank the chairman again for his leadership, for his bipartisan way of tackling these issues always, and also for building consensus in everything he does in this committee. I look forward to the testimony of the witnesses. And once again, thank you, Chairman Kanjorski.

Chairman KANJORSKI. Thank you, Ms. Pryce.

And now for an opening statement, our friend, the gentleman from California, Mr. Sherman.

Mr. SHERMAN. I thank the chairman for holding these hearings. I think the Federal Government needs to have expertise on insurance. I see a Federal Office of Insurance as posing both one opportunity and one danger or concern.

We have seen international trade agreements used to preempt consumer protection, to preempt environmental protection, and basically to put power in the hands of those in the corporate sector and to take it away from everyone else. If this Office simply takes us further down that road, that could of course be a concern.

I see one opportunity, and that is that there are companies selling insurance around this country who are affiliated with European

insurance companies who continue to, I would say, cheat the families of the victims of not only the Holocaust, but the Armenian genocide and all of the tragic things that happened during World War I and World War II.

We have a circumstance in which these companies refuse to post on the Internet the names of those insureds who died in the World War I or World War II era, or at least who bought their policies long before then. They refuse to put on the Internet the names of those insureds who are over 80, over 90, or over 110 years old where they have had no contact with the insured or their family since 1946. Why? Because they would prefer not to pay anyone on the policies.

My concern? Consumer protection. Show me a company who won't take every effort possible to connect with the family, even the distant family, of an Armenian insured who was born in the 1860's, and I will show you a company that I don't think is a good bet to invest with in 2008.

So I look forward to this Office identifying for the American people those American companies affiliated with companies who sold insurance before World War I and before World War II in Europe and continue to refuse to post this information on the Internet. I think that is a function that is perhaps best handled at the Federal level. I look forward to seeing that as one of the functions of this new Office.

I yield back.

Chairman KANJORSKI. I recognize the gentleman from Illinois, Mr. Manzullo.

Mr. MANZULLO. Mr. Chairman, thank you for holding this hearing to discuss the creation of the Office of Insurance Information. I want to extend a special welcome to one of the witnesses, Michael McRaith, who is the director of the Division of Insurance in my home State of Illinois.

The committee is familiar with my misgivings regarding Federal intervention in the State insurance markets in the form of an OFC or through other vehicles such as the one we are discussing today. As I previously stated, I have yet to see any evidence that the insurance industry is in such dire straits that only an OFC can save it.

Likewise, if the establishment of the Office of Insurance Information is directed towards making it easier for foreign insurers to deal with the United States, I would point to the fact that 85 percent of the reinsurance market is already foreign-owned, hardly indicating that foreign companies are not willing to do business in the United States with our current regulatory structure.

In light of this, I would be interested in hearing two things from our witnesses today. First, I am curious whether they think it is a wise policy to allow foreign governments to request preemption in State laws when those State laws were presumably put in place to reflect the unique needs of the individual State and its consumers. I would additionally like to know if any of the witnesses can give me a clear picture of what State laws might be subject to Federal preemption.

Second, I am interested to know why the witnesses feel that the OII would be a better advocate on their behalf than the capable ad-

vocate already available to them in the USTR and the Department of Commerce.

Thank you, Mr. Chairman, for allowing me the opportunity to issue a statement. I look forward to hearing from the witnesses today.

Chairman KANJORSKI. Thank you, Mr. Manzullo.

We will now hear from the gentleman from Georgia, Mr. Scott.

Mr. SCOTT. Thank you very much, Mr. Chairman. I am delighted to have the witnesses on this important hearing. I certainly want to thank you, Mr. Chairman, and Ranking Member Pryce, for holding the hearing. And I am pleased that the chairman has chosen to hold numerous hearings on this subject, for it is indeed an important and timely discussion, as insurance reform has been a very hot button issue for quite some time now.

Insurance regulatory reform is an issue that many involved agree requires action, and action soon. However, it is evident that the approach to the concerns involved are still somewhat mixed.

As the insurance industry continues to be primarily regulated at the State level, with many involved wanting increased Federal oversight, I am interested to hear the views and concerns of our distinguished witnesses as we work towards some sort of consensus.

I think the operative word here is a "consensus" on how to proceed forward, for I believe we all agree regulatory reform is indeed necessary. But with any type of reform, it will take more time, it will take more discussion, and it will take compromise on how we may move forward. The American consumer deserves no less.

I am further interested to hear from the witnesses regarding their perspective and opinions on H.R. 5840, the Insurance Information Act of 2008. We want to take into account the actual operations of these businesses and how to ensure that whatever action we do take does not deter competition, lessen efficiency, or increase costs of operating.

From the development of global markets, to the various and detailed policy rationales towards pursuing regulatory reform, we must take all into account. And we have to listen to both sides of the issue before taking any further action.

However, I do believe that the bill that I have introduced, along with my good friend and colleague, Congressman Geoff Davis, H.R. 5611, the National Association of Registered Agents and Brokers Reform Act of 2008, is a good start.

And both Geoff and I are deeply appreciative for the guidance and assistance from our Chairman Kanjorski on our bill, as well as Ranking Member Pryce, as they help us; for we feel that this is a good start towards reform which would ensure adequate agent/broker licensing as well as ensure increased competition for everyone, as the bill now has garnered 42 cosponsors, both Democrat and Republican, and many of them are on this committee.

So I believe that this has strong support and interest, and that our bill should be a part of any insurance regulatory reform markup package. That is important. The legislation of myself and Congressman Davis will help reform and modernize a very important part of the State insurance regulation, and that is, agent and broker licensing. The legislation would further benefit consumers

through the increased competition among agents and brokers, leading to greater consumer choice. And that is what we are after.

This legislation is basically just simple and straightforward. Insurance agents and brokers who are licensed in good standing in their home States can apply for membership to the National Association of Registered Agents and Brokers or, as we affectionately call it, NARAB, which will allow them to operate in multiple States.

A private and nonprofit NARAB entity consisting of State insurance regulators and marketplace representatives will serve as a portal for agents and brokers to obtain nonresident licenses in additional States. This is very much needed.

And of course, that is provided that they pay the required State nonresident licensing fee and that they meet the NARAB standard for membership. Membership in NARAB would be voluntary and would not affect the rights of a nonmember producer under any State license. This is a very, very well thought out and very much needed piece of legislation.

The bill would also establish membership criteria, which could include standards for personal qualifications, education, training, and experience. And further, member applicants would be required to undergo a national criminal background check. And, to be very clear, NARAB would not—I repeat, would not—be a part of nor report to any Federal agency and would not have any Federal regulatory power.

Federal legislation is needed to ensure a reciprocal licensing process for insurance agents and brokers, and Congress has already endorsed this concept when we passed the Gramm-Leach-Bliley Act in 1999. It would have created NARAB if a number of States did not reach a certain level of licensing reciprocity.

And although enough reciprocity was provided to avoid the creation of NARAB, it has been brought to my attention and others on this committee by agents, and agents in my own home State of Georgia and from those in other parts of the country, that there is a frustration over incomplete insurance licensing reciprocity. It is apparently clear that the bar was not set high enough in Gramm-Leach-Bliley, thus the reasoning behind this important litigation.

I am simply working to ensure an updated version of NARAB. I believe the increased competition among agents and brokers this bill would create would be beneficial to all, and on all accounts be more fair; in addition, and of most importance, greater consumer choice.

As more and more agents operate across State lines, this problem of reciprocity has become worse, and it has become apparent to me and others on this committee that true nonresident licensing reform for insurance agents could only really be achieved through legislation on a thorough level.

Again, this litigation would simply narrowly target only the area where there is a problem. And again, it has garnered support from both sides of the aisle. I look forward to working with my colleagues in garnering further support on this bill. And as my colleagues begin to fully understand this problem, I believe everyone will be aware of the need for adequate agent licensing reform.

Thank you very much, Mr. Chairman, and I look forward to the testimony of the witnesses.

Chairman KANJORSKI. Thank you, Mr. Scott.

We will now hear from the gentleman from California, Mr. Royce.

Mr. ROYCE. Mr. Chairman, thank you very much. I thank you for your continued leadership on this issue. The last three hearings that we have had on insurance regulation, I think, have been particularly insightful, and I look forward to this hearing today.

I would also like to welcome Deputy Assistant Secretary Norton. This hearing is a testament to valuable insight provided by the Treasury Department in the "Blueprint for a Modernized Regulatory Structure." And I believe the concept, your concept, Mr. Chairman, of an Office of Insurance Information, is one worth pursuing.

And I think as well that the past three hearings that we have sat through, where we have heard the information come forward about the depth of the problems currently experienced in the insurance sector, these are problems that have to be confronted.

One of the major problems, of course, is the current lack of expertise on insurance matters within the Federal Government. An OII would go a very long way toward filling this void by providing, within the Department of the Treasury, an expert able to provide Congress with the necessary insight when we are dealing with information like a financial shock or a national crisis, or when we are in the process of formulating tax policy. It would be good to have somebody have a seat at the table who understands insurance on a full-time basis from within the Treasury Department.

Giving that Office, as you are doing here, the authority to reach agreements with our trading partners is equally important because considering the global nature of the insurance sector, this authority is long overdue.

We have all heard the stories from some of our most reliable trading partners expressing the frustration—and we have seen it, frankly, in the numbers in the balance of trade and everything else—but expressing the frustration that our industry has with the fact that Europe now is moving to one national market for all Europe for insurance, and here in the United States we have 50-plus separate markets, effectively, for insurance, and all of the problems that that creates.

So I believe the greatest attribute of an Office of Insurance Information is that it moves us one step closer to what I believe would solve these problems, which is an optional Federal charter for insurance. Insurance consumers and providers have suffered under the current mandatory State-based regulatory structure for far, far too long with far too many costs for the consumers, $13.7 billion in additional costs.

With the exception of Mr. McRaith's State of Illinois, every State now subjects property and casualty insurance products to various degrees of price controls. And the consequences of that, from all the studies we have seen from economists, is that this form of rate regulation is what produces the $13.7 billion in additional premium costs to the consumers. It prevents companies from setting actuarially sound rates in the meantime.

And, frankly, under the current structure, if the industry is going to try to introduce a new insurance product on a national scale, that is going to take at least many months—it is probably going to take years—because of the delay experienced by going to every single State.

And every time you have a new legislator elected in some State body, they will run through a bill. For instance, in a new Connecticut bill on surplus lines, insurers must have the cover of their policies printed in at least 12 point bold type instead of the previous 10 point bold type that the neighboring States use.

Arbitrary mandates like this are so common at the State level and they cost consumers, as I say, $13.7 billion. The inherent nature of the State-based system means that you have 99 legislative bodies and 54 regulators who all have a say in how the insurance sector is regulated, and most of them manage to stay out of step.

So an alternative to this system is long overdue. And as the Treasury Blueprint notes, any modern and comprehensive insurance regulatory structure should do several things. It should enhance competition among insurers in national and international markets. It should increase efficiency, promote more rapid technological change, encourage product innovation, reduce the regulatory costs, and above all, provide the highest quality of consumer protection. And that is another concept of bringing a world-class regulator on the front of consumer protection into this.

So I share this sentiment. I believe an optional Federal charter created through an Office of Insurance Information is the best way to achieve this model. And I look forward to moving this process along.

But I wanted to thank you again, Mr. Chairman, for the hearings that you have held on this challenging subject, and I look forward to hearing the two panels of witnesses here. I yield back the balance of my time.

Chairman KANJORSKI. Thank you very much, Mr. Royce.

Now we will hear from the gentleman from Florida, Mr. Feeney.

Mr. FEENEY. Thank you, Mr. Chairman. I am encouraged that the committee is looking at insurance regulatory reform proposals today. In my home State of Florida, as is well known, we are currently facing many insurance-related issues, not the least of which is the availability of affordable reinsurance.

Last week, I introduced the Reinsurance International Solvency Standards Evaluation Board Act of 2008. This legislation would help to reduce the cost of reinsurance and hopefully ultimately lower the cost of insurance to homeowners through encouraging competition in the market.

The RISSEB Act would significantly increase availability of reinsurance by eliminating the discriminatory reinsurance regulations such as collateralizing requirements for certified entities. The nonprofit board would certify, upon request, whether insurance regulatory jurisdictions have adequate reinsurance capital and risk management standards and supervision.

The Act would create a system where reinsurers, supervised by certified jurisdictions, would not be discriminated against versus domestic reinsurers with respect to requirements for credit for reinsurance. These certifications could be recognized for equivalence

determinations by foreign countries to protect compliance by U.S. insurers under the proposed EW Solvency II directive.

By increasing the competitiveness of the reinsurance market and creating uniformity, we would give their customers more choice. The provisions of the bill are completely voluntary but allow domestic and foreign reinsurers to do business nationwide if the proper standards and safeguards are in place.

Mr. Royce is an eloquent advocate for an optional Federal charter. I don't know that all of those issues have been fully worked out, but I will say that there is no insurance industry or market more suitable for multi-jurisdictional performance than the reinsurance market. And that would be a great place to start as we try to deal with what is increasingly not just a national but a global issue when we talk about reinsurance especially.

While the RISSEB Act is not in the legislation we are addressing today, I am pleased that the chairman is opening the debate for reinsurance reform, and I yield back the balance of my time.

Chairman KANJORSKI. Thank you, Mr. Feeney.

The gentlelady from Florida, Ms. Brown-Waite.

Ms. BROWN-WAITE. I thank the gentleman. I also am glad that you are holding this hearing today, and I look forward to hearing from the witnesses.

As you know, insurance, specifically property and casualty insurance, is one of the biggest issues facing Florida today. Our State has grappled with affordability and availability issues throughout the past decade-and-a-half, and we still don't see any end in sight. Therefore, any legislation that would affect a State's role in insurance regulation has to be important to Floridians and those of us fortunate enough to be elected to represent them.

I recognize that insurance markets in the United States are fragmented. And while I was not here during the 9/11 attacks, I can imagine how difficult gathering information from 50 States would have been. I agree that a centralized Office providing insurance expertise may be something that Congress needs.

However, we need to be leery of an Office that supersedes State laws, particularly when it comes to insurance. I appreciate the efforts that Mr. Kanjorski has made to tailor this bill specifically to address issues relating to foreign insurers. But we need to tread very lightly here.

I am interested in what the witnesses have to say about this important legislation, and I certainly look forward to hearing from them. Again, thank you, Mr. Chairman, and I yield back the balance of my time.

Chairman KANJORSKI. Thank you very much, Ms. Brown-Waite.

And finally, we will hear from Mr. Davis of Kentucky.

Mr. DAVIS OF KENTUCKY. Thank you, Chairman Kanjorski and Ranking Member Pryce, for holding this hearing today on the proposed legislation to establish an Office of Insurance Information.

As we consider another proposal for insurance reform, I want to make mention of the bill that my good friend, Congressman David Scott, and I introduced earlier this year and was commented on earlier by David, H.R. 5611, the National Association of Registered Agents and Brokers Reform Act.

We now have 42 bipartisan cosponsors, with more joining every week, including 25 members of the Financial Services Committee. This is a good indication of the support for the bill among committee members and interest in moving this measure forward.

As you all know, the NARAB concept was originally part of Gramm-Leach-Bliley, but unfortunately never went into effect. Nearly 10 years later, we are still in need of progress on the issue of licensing reciprocity for agents and brokers. NARAB II would maintain the State-based regulatory system and all the revenue associated with it, while simplifying the licensing process and making life easier for small business owners who attempt to do business and insure across State lines. I have personally experienced this myself as a small business owner seeking insurance in the 1990's and in the time prior to coming to Congress.

As is the case with Chairman Kanjorski's Office of Insurance Information proposal, I believe NARAB II is a meaningful contribution that has breathed new life into a debate we have continued for a number of years now. There are a number of insurance reform proposals out there, both big and small. Regardless of any of our positions on the various insurance reform bills, I think we can all agree that there is always room for improvement in the area of regulation.

I would respectfully ask the chairman to include NARAB II in any mark-up of insurance legislation this year, and I look forward to hearing the witnesses' testimony.

I yield back. Thank you.

Chairman KANJORSKI. Thank you very much, Mr. Davis.

Are there any other members of the committee who wish to make an opening statement?

[No response]

Chairman KANJORSKI. There being none, we will move on to our panel.

First and foremost, I welcome the members of the panel today. And without objection, your written statements will be made a part of the record. You will each be recognized for a 5-minute summary of your testimony.

The first witness we have is Mr. Jeremiah O. Norton, Deputy Assistant Secretary of the United States Department of the Treasury. Mr. Norton?

STATEMENT OF THE HONORABLE JEREMIAH O. NORTON, DEPUTY ASSISTANT SECRETARY, U.S. DEPARTMENT OF THE TREASURY

Mr. NORTON. Thank you, Chairman Kanjorski, Ranking Member Pryce, and members of the subcommittee for inviting me to appear before you today to discuss H.R. 5840.

Insurance performs an essential function in our domestic and global economies by providing a mechanism for businesses and individuals to safeguard their assets from a wide variety of risks. Insurance is similar to other financial services in that its cost, safety, and ability to innovative and compete is heavily affected by the substance and structure of its regulation.

On March 31st, the Treasury Department released a report on financial services regulation entitled, "Blueprint for a Modernized

Financial Services Regulatory Structure." In addition to making recommendations for a long-term optimal regulatory structure, the Blueprint also presents a series of short-term and intermediate-term recommendations that could, in Treasury's view, improve and reform the U.S. financial services regulatory structure, including the current State-based regulation of insurance.

In the intermediate term, Treasury recommends the establishment of an optional Federal charter. An OFC structure would provide insurance market participants with the choice of being regulated at the national level or of continuing to be regulated by a State.

While an OFC offers the best opportunity to develop a modern and comprehensive system of insurance regulation, Treasury acknowledges that the OFC debate in the Congress is ongoing. At the same time, however, Treasury believes that some aspects of the insurance regulatory regime require immediate attention.

In particular, Treasury recommends that the Congress establish an Office of Insurance Oversight within Treasury. This newly established Office would be able to focus immediately on key areas of Federal interest in the insurance sector, including international insurance issues.

The insurance marketplace operates globally, with many significant foreign participants. There is increasing tension among current regulatory systems due to an absence of a clear and settled means for governments to recognize the equivalency of prudential regulation of insurance and reinsurance industries seeking to provide services in other countries. This impairs the ability of U.S.-based firms to compete abroad, and the allowance of greater participation of foreign firms in U.S. markets.

In particular, foreign government officials have continued to raise issues associated with the United States having at least 50 different insurance regulators, which makes coordination on international issues difficult. The NAIC has attempted to fill this void by working closely with international regulators in various areas. NAIC itself is not a regulator, but facilitates communications among the States on many issues, including international insurance regulation.

Nevertheless, it is becoming increasingly difficult for the United States to speak consistently and effectively with one voice. It has become clear to Treasury that there is an immediate need to establish an insurance sector advisor at the Federal level, as well as to create a framework to address emerging international issues. Two examples of such a need include reinsurance collateral and the European Union's Solvency II directive.

As called for by the Blueprint, the Office of Insurance Oversight would focus immediately on key areas of Federal interest in the insurance sector. It would advise the Secretary of the Treasury on major domestic and international policy issues, provide true national regulatory expertise and guidance on the insurance industry and how it relates to the overall economy, and provide such expertise and guidance on legislative issues pending before the Congress.

The Office should be empowered to address international regulatory issues with foreign regulators. In this role, the Office should be the lead in working with the NAIC and State insurance regu-

lators, who would still be primarily responsible for implementing insurance regulatory policies. Its focus would be on regulatory matters that are not presently addressed at the Federal level.

It would not supplant the Commerce Department, the USTR, or other Executive Branch agencies, but would work closely with them. For example, the Office could lead in discussions with international regulators on international regulatory issues to develop agreements that provide for the recognition of substantially equivalent prudential measures and regulatory systems with respect to insurance and reinsurance services.

Treasury welcomes the introduction of H.R. 5840 by Subcommittee Chairman Kanjorski and Ranking Member Pryce. This bill would create an Office within Treasury very similar to that recommended in the Blueprint. Overall, Treasury supports the bill's creation of the Office. We appreciate the efforts of the chairman and the members of this committee. Treasury has some concerns. However, we are confident that we can continue to work together to address these issues as this legislation moves through the process. Thank you.

[The prepared statement of Deputy Assistant Secretary Norton can be found on page 74 of the appendix.]

Chairman KANJORSKI. Thank you very much, Mr. Norton.

And now we will hear from the Honorable Michael T. McRaith, director of the Illinois Division of Insurance, on behalf of the National Association of Insurance Commissioners.

Mr. McRaith.

STATEMENT OF THE HONORABLE MICHAEL T. McRAITH, ILLINOIS DIVISION OF INSURANCE, ON BEHALF OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Mr. MCRAITH. Chairman Kanjorski, Ranking Member Pryce, and members of the committee, thank you for inviting me to testify today. I am Michael McRaith, director of insurance for the State of Illinois, and I speak on behalf of the National Association of Insurance Commissioners.

I congratulate you on your continuing evaluation of insurance regulatory modernization. While we may disagree on solutions, I expect we do agree that insurance regulation not only serves our domestic industry but must also prioritize U.S. consumers. And while some may take the opportunity presented by H.R. 5840 to clamor for the so-called optional Federal charter, I will ignore the rhetoric and focus on the merits of the current draft.

To be sure, as with any dynamic industry, insurance regulation must modernize. States have been working with the sponsors and with leaders of producer groups to improve licensing uniformity and reciprocity through H.R. 5611, and this mutually constructive good faith effort has made great strides.

Through a public hearing and comment process, the States are near conclusion of a proposal for comprehensive reinsurance reform. The uniform certificate of authority application has been adopted by all States. The interstate compact now has 31 members, with more coming as early as today.

In these and other areas, individually and through the NAIC, thousands of State regulators work every day for consumers and

for industry members. We supervise 36 percent of the world's insurance market, and 26 of our members rank among the top 50 markets in the world. We have the world's largest and most competitive insurance market, and we, not any other country, provide the gold standard for regulation in developing countries.

H.R. 5840 would create the Office of Insurance Information to provide a focal point for international insurance agreements and Federal data analysis. State regulators look forward to partnering with the OII for these narrow purposes.

The NAIC maintains the world's largest insurance financial database, the Consumer Information Resource, licensing information for more than 4 million producers, and other subject matter data. Our vast archive kept current on customized software and hardware platforms can be manipulated to generate thousands of reports. States receive confidential information each day, and will work with the OII to preserve the same confidentiality constraints under which we operate.

The OII would also coordinate Federal policy on international matters. Contrary to mischaracterizations in others' testimony, the NAIC has been active internationally, collaborates regularly with our foreign counterparts, serves as technical advisor to the USTR, and works with the OECD, the Joint Forum, and others.

But accepting the limits of Article I, Section 10 of the Constitution, we thank this committee and your talented staff for our important dialogue on the scope of the OII's preemptive authority. Some additional work must be done. Among others, the term "agreements" should be defined, and clarity should be added so that subsection 313(j) excludes the business of insurance.

For these and other improvements, we pledge our continued good faith interaction. We must be ever vigilant, though, that the OII not gain authority to preempt the consumer protections and solvency standards adopted by the States and that serve the public so well.

While conversation most often centers on industry initiatives, in 2007, State regulators replied to over 3 million consumer inquiries and complaints. Like you, we know that a single mother in a car wreck, racing between jobs, needs local and prompt assistance. We know that an elderly gentleman on a fixed income sold an indexed annuity cannot wend his way through a Federal bureaucratic morass. After every incident, our consumers, your constituents, need to know that the company that collected their premiums, often for years, has the wherewithal to pay the claim.

And for these reasons, while we actively support efforts to aid U.S. insurers globally, we oppose any legislation with a broadly preemptive approach.

To conclude, we express extreme caution against preemption, support the objectives of H.R. 5840, and renew our commitment to engage constructively with this committee. Thank you for your attention, and I look forward to your questions.

[The prepared statement of Mr. McRaith can be found on page 68 of the appendix.]

Chairman KANJORSKI. Thank you very much, Mr. McRaith.

We will next hear from the gentleman from Rhode Island, a member of the Rhode Island House of Representatives, and the

president of the National Conference of Insurance Legislatures, Mr. Brian Kennedy. Mr. Kennedy?

STATEMENT OF THE HONORABLE BRIAN P. KENNEDY, REPRESENTATIVE, RHODE ISLAND HOUSE OF REPRESENTATIVES, AND PRESIDENT, NATIONAL CONFERENCE OF INSURANCE LEGISLATORS

Mr. KENNEDY. Thank you very much. Good morning, Chairman Kanjorski, Ranking Member Pryce, and members of the subcommittee. Thank you for inviting me to testify on insurance regulatory reform and H.R. 5840.

I am Rhode Island State Representative Brian Patrick Kennedy, and I am the chairman of the House Committee on Corporations in Rhode Island, with jurisdiction over insurance and financial service issues. I also serve as the president of the National Conference of Insurance Legislatures, better known as NCOIL.

When commenting on H.R. 5840, NCOIL finds it hard to close its eyes and ignore the lack of any State legislative presence because it is the State legislators that have shaped, by statute, the robust insurance market that exists today. It is ironic that States should bear the burden of proof to half preemption of the very laws that successfully steered the insurance sector through the pitfalls that have faced similar industries.

State solvency laws have helped make the insurance market stable while the banking market, under Federal regulation, was rocked by the savings and loan scandals of the 1990's, and by the subprime lending crisis of today. And even Federal initiatives, including ERISA, FEMA, and the NFIP have often fallen short of their goals.

Regarding the NAIC role in this proposal, NCOIL believes that giving the NAIC a primary role in the Office of Insurance Information allows the tail to wag the dog. State regulators, four-fifths of which are gubernatorial appointees, are authorized by legislators to interpret and enforce the statutes that we develop. H.R. 5840 would dramatically enhance the authority of the NAIC at the expense of the State officials to whom they, as insurance regulators, are accountable.

It is unprecedented that the Federal Government would give such power to a private trade association—I repeat, a private trade association—or to what NAIC immediate past resident Walter Bell of Alabama in an April 9, 2007, letter called: "a 501(c)(3) nonprofit corporation with voluntary membership and not a State government entity." This NAIC president went on to say that: "When individual insurance commissioners gather as members of the NAIC, they are not considered a governmental entity or a public body as defined by the various open meeting laws, but rather are a private group. As an organization, the NAIC does not have any regulatory authority."

We have noticed that Congress, like us, does not take lightly the ceding of authority to an Executive Branch. This was evidenced by your reaction to the Bush Administration's August 2000 SCHIP enrollment directive. Now Congress is asking State legislators to cede authority to a private trade group.

NCOIL questions the scope of public policy meant to be considered by the Office of Insurance Information. H.R. 5840 would authorize the Office to collect, analyze, and advise on major domestic and international insurance policy issues. The word "advise" means to recommend, and indicates that the OII duties could be interpreted to be broader than simply offering insurance-related data.

We are also concerned with what the term "international insurance matters" could come to mean since such matters, which are painted with a broad brush in the discussion draft, could be interpreted to also include accounting, life insurance, or property issues that generally are regarded as domestic policy. This could have dramatic, unfortunate outcomes for consumers and our constituents. The bill should clearly limit the OII's domestic role to that of an informational clearinghouse.

In previous statements, certain Members of Congress have questioned the practicality of an optional Federal charter for all lines of insurance. But an OII would establish a framework that a future Congress could build upon to create a Federal insurance regulator, such as an OFC or an Office of National Insurance. Creating an OII and not expecting an OFC is like building a baseball diamond and asking people not to play. As in the movie "Field of Dreams," if you build it, they will come. And that is not our dream.

OFC or ONI proposals would potentially jeopardize State consumer protections, existing regulation, and ongoing modernization efforts and State revenues. NCOIL feels that H.R. 5840 also leaves open many questions, including would States be left holding the bag and responsibility regarding consumer protection as well as enforcement of Federal policy, and would States realistically have the power under the proposed notice and comment process to fight off inappropriate State preemptions?

We believe that experienced State officials who are closer to consumers can more effectively regulate and can better serve our mutual constituent base. And like you, we recognize that insurance regulation must be modernized in certain targeted areas, and we believe States should be allowed to continue to do so.

The success of the Interstate Insurance Compact proves that States can speedily enact reform, and as Director McRaith pointed out, the compact is now an independent mechanism of the States and it is responsible to its now 31 member jurisdictions, offering one central filing point for life, annuity, disability, and long-term care insurance products.

State legislators sit on a special committee that helps guide and advise the compact efforts. As with the compact and to reach consensus, we believe legislators should also have a role in any insurance regulatory advisory group.

In concluding, there is no crisis in the insurance industry, and not one of my constituents has ever called me requesting support for Congress's effort to set up a new Office of Insurance Information or an optional Federal charter because of problems at the State level.

While I feel somewhat like that lonely Maytag repairman this morning, I want to say that I appreciate the work of the subcommittee and the opportunity to comment on H.R. 5840. Thank you.

[The prepared statement of Mr. Kennedy can be found on page 49 of the appendix.]

Chairman KANJORSKI. Thank you, Mr. Kennedy. Thank you for your testimony. I have certain questions, and I am sure my colleagues do as well.

First of all, I suspect you could not support the legislation any more than you already have. Is that correct, Mr. Kennedy?

Mr. KENNEDY. I will say, Mr. Chairman, that I don't think we are officially against the proposal. But I think our concern at this point in time is that it is very top-heavy in the creation of the advisory role, specifically with the number of members being expanded out to 13 members without any legislative presence whatsoever. And legislators do have a background and a role currently within insurance jurisdiction and regulation.

Chairman KANJORSKI. Well, you would think differently if we included legislators on that advisory committee. Is that correct?

Mr. KENNEDY. I think that would probably help us a little bit more to understand the role and be able to play that role, much as we do with the insurance compact.

Chairman KANJORSKI. Well, we are nudging there slowly. We may get ourselves to some role that we can both agree upon.

I guess we have a good division on the panel. Mr. Norton, other than being generally supportive, you said that Treasury has some reservations. But in your testimony, you did not indicate what they are. Would you like to indicate that now?

Mr. NORTON. Sure, Congressman. First, I would just emphasize that Treasury welcomes the introduction of your legislation and supports the creation of an Office. And we have appreciated the collaboration with your staff to date.

In terms of concerns, we think there may need to be more clarity on the term "agreement" and on the authority to enter into agreements. And we would hope that we could continue collaborating with your staff to work out some of those details should you have similar concerns.

A second concern that we have is with the independent congressional testimony that is in your bill and that is provided to the Office, we feel as though it is not necessary, as this Office is supposed to advise the Secretary of the Treasury on how to exercise his or her power. And other offices in the Executive Branch that have such independence are usually led by individuals who are nominated by the President, confirmed by the Senate, and operate as financial services regulators, for example.

So those are the highlights. But we think that they are very bridgeable. And we again appreciate the collaboration and hope that we can continue that.

Chairman KANJORSKI. We have to work on that. We have gone several ways on that as the legislation has been proceeding, as you know. But it is my general and personal view that we have to be very careful to keep this Office out of the political realm and out of political control. That is why a measure of independence, I think, is essential. Without that, the Office would fall into significant control of the party who exercises control in the Executive Branch. That could be unfortunate—not that it would be, but it could be.

Mr. NORTON. Again, I certainly understand those concerns. I think at this point we have a bit of a different perspective. But hopefully we can continue talking about this.

Chairman KANJORSKI. Well, I hope we can work on that in the next several weeks, not months, so that we can move this along.

Mr. NORTON. Absolutely. We are focused on this, Mr. Chairman.

Chairman KANJORSKI. Very good. The gentleman sitting next to you from Illinois operates the most important insurance division in the United States. Every time I meet with the insurance industry, they tell me that Illinois is just the cat's meow when it comes to insurance.

Do you think we need this legislation at all, Mr. McRaith?

Mr. MCRAITH. Mr. Chairman, first of all, I am very proud of the insurance marketplace that we have in Illinois and the regulatory structure. It is somewhat disconcerting to be the object of so many industry fantasies, but I think that we will continue our efforts in Illinois in a professional manner.

The legislation as proposed is legislation that is on its way to being narrowly crafted enough that the regulatory community could stand behind it. As you understand, of course, our primary concern is that through a trade or international commercial agreement, that the protections that have worked so well for the States and the industries, for your constituents, that those not be threatened, that they be considered and integrated.

And to the extent that there is the possibility of a discriminatory impact on a non-U.S. insurer, which is one of the essential grounds for preemption, that the State regulatory perspective on the reasons for that discriminatory or less favorable treatment of that company are recognized.

But to be clear, we do remain committed to working with you, your staff, and the other sponsors of this bill to improve it, to narrow the possibility of that inadvertent preemption that I think we all agree we don't want to happen.

Chairman KANJORSKI. Well, we appreciate that. We hope you will keep that attitude. And we are hoping to work with you.

I know that my time has expired, and I will just take one second to say, Mr. Kennedy, I want to assure you that the subcommittee is not in search of a problem. We really have been meeting with the insurance industry over a long period of time now, and seldom do we meet with members of the industry that they do not call some major, significant attention of ours to changes that could be made to facilitate better service, less expense, greater competition, etc.

So I want to assure you on behalf of myself and the committee that we are not looking for a problem to solve. I think we have a few in Washington that need solving, so we really do not have to seek them out. This is a problem that sort of presented itself to us. But thank you, and we will take into consideration your thoughts.

Now, the gentlelady from Illinois, Ms. Pryce—Ohio. I am sorry.

Ms. PRYCE. O-H-I-O, we say proudly in Ohio. Thank you, Mr. Chairman.

First of all, I want to give my personal thanks to Treasury for the good start to so many of our problems in the Blueprint that you put forward. And this, I know, is just one part of it. As this com-

mittee does our due diligence in examining many other parts, I just want to say that I think that we are off to a good start, perhaps overdue, but there is no time like the present to get moving.

Let me talk a little or let me ask a little bit about, you know, as we examine our balance of trade issues and consider trade in services, is there any measurement of loss on the part of U.S. interests, whether it is anecdotal or industry estimates or otherwise, that we can really point to to get a feel for what kind of disadvantage we may be in without a Federal component to insurance, at least as an element of trade.

Do we have any estimates? Do any of you know of any of those kind of numbers that might be floating out there? I am sorry it is very hard to pinpoint with any exactness what they are, but is there anything like that available? Treasury doesn't have anything that—

Mr. NORTON. Congresswoman, that is one of the reasons why we think it is important to create an Office, so that we have a place to collect and analyze such information.

Ms. PRYCE. And perhaps these questions might be better saved for our industry witnesses in the next panel. But I think it is important that we know what we are dealing with and why we are trying to go in this direction.

Well, then, let me ask Mr. McRaith, or any of you: There seems to be consensus as to what NAIC might be very against and not want to support. Can you offer to this committee thoughts about what you would be willing to support in this legislation? And if you have any thoughts in particular about reinvestment collateral issues or reinvestment insurance and Solvency II standards.

Mr. MCRAITH. Absolutely. Congresswoman Pryce, thank you for the question. I think you have asked an excellent question. I would like to, first of all, answer the first part.

The NAIC supports the idea that the Federal Government, in Treasury or somewhere else, should have insurance information and resources which it can call upon when needed in times of national crisis, whether it is 9/11 or the natural catastrophes in the Gulf. We also recognize, as I said in my testimony, that Article I, Section 10 of the Constitution limits the authority of the States to enter into treaties or commercial arrangements with foreign governments.

Having said that, we also stand today, Congresswoman, able and ready and actively participating in discussions with the sponsors of H.R. 5611 and the industry groups in support of that bill that will help us move forward significantly with uniformity and reciprocity in producer licensing.

Reinsurance collateral is another important issue. Congressman Feeney introduced a bill a couple of days ago. The NAIC is nearing the conclusion of a comprehensive reinsurance reform proposal, not just focused on reinsurance collateral but comprehensive reform.

And finally, you asked about Solvency II. Let's be clear what we are talking about. This is alluded to in the written testimony of several of the industry participants and in Treasury's written testimony as well. Solvency II has not been adopted in any final form by the E.U. In fact, the Financial Times reported today that several of the smaller E.U. countries are very concerned and feel very

threatened by the possibility of Solvency II and that form of regulation.

If it were to pass this year, assuming they adopt a final high-level framework in 2008, implementation is not until 2012 at the earliest. So as we talk about Solvency II as if it is some impending, near-term prospect, let's be clear about what we are talking about. It is not happening tomorrow. It hasn't even been adopted in final form by the E.U. at this point.

I think it is also clear—your prior question about the trade imbalance—the industry can talk about that, and I expect that they will. But as we talk about alternative regulatory schemes, let's accept that we have a more mature regulatory system in the United States than the E.U. does. Let's accept that our insurance market is now more robust than any other country in the world.

And understand, the E.U. has 27 different jurisdictions still, 27 different forms if you want to participate in those jurisdictions, 23 different languages. So as we talk about these issues—and again, I appreciate the substance of your question—we need to acknowledge that there are some facts that are really important to those discussions as well. Thank you.

Ms. PRYCE. Well, thank you for your very good answer. And let me just say, because my time has expired, that maturity is important but that doesn't necessarily translate to what we need in this global market.

Our robust industry needs somewhere to go. We are a robust industry. With the job losses in the United States, and the way our economy is, we really need to foster trade in the E.U., and we just want to do it right.

And so thank you very much, all the witnesses. Thank you, Mr. Chairman.

Chairman KANJORSKI. Thank you, Ms. Pryce.

Now the gentleman from California, Mr. Sherman.

Mr. SHERMAN. Thank you, Mr. Chairman.

Mr. Norton, one of the main purposes of this bill is to let Treasury deal with circumstances where State regulation runs afoul of our international treaties. Can you identify any practice of any State now that violates or comes close to violating our international treaties?

Mr. NORTON. Congressman, thank you for that question. I think it is an important issue to address. When Treasury released its Blueprint, we put forth recommendations. If I could just—

Mr. SHERMAN. If I can interrupt, can you just give me a specific example of a specific practice?

Mr. NORTON. Well, the point of our recommending the creation of this Office was not to address a specific example or a specific issue. What we saw was that in the banking world and the securities world, those financial services sectors had regulatory authorities that could go overseas and enter into regulatory equivalence agreements, and the insurance sector does not have that.

Mr. SHERMAN. Mr. Norton, I have such limited time.

Mr. NORTON. I understand.

Mr. SHERMAN. Do you have a specific example?

Mr. NORTON. Congressman, there are two that we highlight in our testimony that we believe are important, and those are reinsur-

ance collateral and Solvency II. But again, our recommendation was not to address a specific past practice, but to give the insurance sector similar powers that banking and securities regulators have.

Mr. SHERMAN. Ms. Pryce identifies insurance as important to our trade balance. Of course, service is important to our trade balance. But of course, we generate funds from abroad by providing legal services, accounting services. Radiological services can be traded internationally.

You are not suggesting that we establish a separate Treasury office for every service industry that could affect our trade balance, are you?

Mr. NORTON. No, sir. Our recommendations were focused on financial services and the regulatory structure regarding financial services. And we highlighted three areas: banking; insurance; and securities and futures.

Mr. SHERMAN. So your focus is not just on any industry that could affect our trade balance. Your focus is on financial services. In my State, they voted overwhelmingly to have rate regulation of insurance, particularly automobile insurance. Is there anything in our international agreements that could allow anyone to claim that such rate regulation violated—and anti-redlining provisions—violated our treaties?

Mr. NORTON. Well, regarding this bill that the chairman has introduced—

Mr. SHERMAN. I will ask you to answer my question. Is there anything in our international trade agreements that could serve as a basis for arguing that rate regulation and anti-redlining provisions violate those international agreements?

Mr. NORTON. I think it is important to define the type of agreements. If they are trade agreements, they still fall under the purview of the USTR as the chief negotiator and lead for the Administration and the Government. What we are trying to discuss in our testimony would be regulatory equivalence agreements in financial services specific to insurance.

Mr. SHERMAN. So you refuse to answer my question on the theory that is not germane to the bill. Okay. Let me move on to—

Mr. NORTON. Congressman, I am happy to talk to our colleagues at USTR and circle back with you, if you would like.

Mr. SHERMAN. Okay. I would ask you to get the information from other folks in the Administration and answer that question for the record. Because you are here proposing an Office that would more effectively enforce the trade provisions, I would sure like to know what those trade provisions are. And I know you would, too, and that is why you will check with USTR.

Mr. NORTON. That is not the intent. We are talking about regulatory equivalency agreements, not trade agreements. Trade agreements would still be under the purview of USTR, at least as we envision the bill, and I think under the chairman's text.

Mr. SHERMAN. So it would only be what kind of agreements, again?

Mr. NORTON. Regulatory equivalency agreements for financial measures, the type that financial services regulators enter into, in securities and in banking.

Mr. SHERMAN. Okay. Thank you. I believe my time has expired.

Chairman KANJORSKI. Thank you, Mr. Sherman.

We will now hear from the gentleman from Illinois, Mr. Manzullo.

Mr. MANZULLO. Thank you, Mr. Chairman. I listened to the testimony of the three witnesses, and I have read the testimony of the other witnesses on the second panel. I don't know if I will be around for that.

But I am a little bit astonished at the gentleman from Illinois. We have a lot of problems in Illinois, but one of the areas where we lead the Nation is in insurance. I have a farm. No less than seven property and casualty insurance companies gave me a quote. The one I went with, a very established company, came back several years later and did risk management on the farm. It cost me $811 to make the repairs. But I appreciate it.

And the only person here who is really making sense is Representative Kennedy, with all deference. Mr. Norton, you come in proposing legislation in a complete vacuum. I think that is dangerous, to come in and create an Office, establish a bureaucracy. And if you guys think for one minute that this Congress is going to establish an Office for information and not go beyond that, I mean, that is not the way this place works.

First you go in with the soft punch, and that is to establish an Office for information. And why the powerful insurance industry needs Congress or Treasury to establish a database for insurance information just—it just blows my mind away. It really does.

This is an attempt to federalize the insurance industry. That is all it is. Representative Kennedy, you understand it better than anybody because not only do you have a background in insurance, but you lead the Nation in the State legislators. Do you agree with my statement? And how dangerous is it for the Federal Government to get involved in setting up this Office? What could it lead to?

Mr. KENNEDY. Thank you very much, Congressman. I will say this, that NCOIL has been very concerned about this. As you know, legislators have always played an important role in moving forward with regulation. It is up to, ultimately, our insurance commissioners and superintendents to carry out that role by implementing the rules and regulations for that particular process.

So we are very concerned at this point in time because of the particular role that the NAIC plays in this proposed OII. There is no role for State legislators, and we feel that that has to take place. As you know, the NAIC at this present time, it is a private trade association.

Mr. MANZULLO. Well, no, no. I mean, aside from that—and I would ask my colleague from Illinois: How do you think that this Congress can only go so far, and then you are going to stop the brakes? I mean, this is—the initial shots are being fired, to come in with the optional Federal charter.

And because I represent Illinois, because we have some of the lowest rates, because we have no regulation, I mean, the rates are not regulated in Illinois. And at times, I have actually seen my car insurance and house and farm insurance go down.

So why should I, as a Member of Congress from Illinois, want to impose a Federal bureaucracy that, just like that, could preempt? I mean, if the issue here is international agreement, all we have to do is beef up the USTR's Office, give them some more money, some more people, and say, "Look, we want you to get involved in this."

Mr. McGrath—or McRaith. I am sorry.

Mr. MCRAITH. That is okay. First of all, Congressman, I do agree with you that we have an excellent insurance marketplace in Illinois. We do regulate in Illinois; we just don't regulate the rates on the front end, on the P&C side, and on major lines of insurance. So I completely agree with you—

Mr. MANZULLO. You regulate for solvency and honesty.

Mr. MCRAITH. Right.

Mr. MANZULLO. And we don't have a problem in Illinois insurance, do we?

Mr. MCRAITH. Excuse me?

Mr. MANZULLO. We don't have a problem in Illinois insurance, do we?

Mr. MCRAITH. When it comes to the property and casualty lines, absolutely not, Congressman. I completely agree with you. We have an excellent, robust—

Mr. MANZULLO. That is because of the great job that you are doing. Right?

Mr. MCRAITH. Thank you very much, Congressman. But to answer your question, we can't look at what might happen politically, strategically. We have been asked to look at the substance of a bill, and in good faith, that is what we have offered to comment on.

The scope of the preemption, as we review the bill, is narrow enough—first of all, any agreement has to be run—the Director of this OII would have to run the proposal or the possibility of any agreement through the advisory group, which includes insurance regulators.

And then, if it becomes part of an agreement, then there is the possibility—and I should add, in deference to Representative Kennedy, there are 13 spots, and I believe it is 5 to 7 that are accounted for with an acknowledgment that the others can come from other groups as appointed by the Secretary. So that could include, of course, State legislators. And I work very well with our legislature in Springfield and will continue to do so, hopefully.

But the point is that the scope of the preemption, as currently constructed, we are very wary of. But we believe that it is narrow enough and can be increasingly narrowed to be certain that it will not threaten the consumer protections and the marketplace regulation that we know is essential for your constituents, for the people of Illinois, and people around the United States.

Mr. MANZULLO. Mr. Chairman, I think that Representative Kennedy is itching for a rejoinder. Would that be appropriate even though my time has run out?

Chairman KANJORSKI. He may.

Mr. KENNEDY. Thank you very much.

As Director McRaith did point out, many of the spots have already been accounted for. But again, there is no guaranteed spot within this OII for legislators at this point in time. There is a big

"if" out there, and too many times, there are too many "if's" and not any concrete proposals that come into play.

So we would like to see something where it is a little bit more concrete. Thank you.

Chairman KANJORSKI. Thank you very much, Mr. Manzullo.

We will now hear from the gentleman from Massachusetts, Mr. Capuano.

Mr. CAPUANO. Thank you, Mr. Chairman.

Mr. Kennedy, I am just curious. Would you feel better if the legislation specified that a member of your organization be part of this advisory board?

Mr. KENNEDY. I would definitely feel a lot better about things. I think that would provide us with the necessary input we need for our legislators that we represent across the country.

Mr. CAPUANO. That is fair enough. Honestly, when it comes to preemption, especially in a new area of any kind, no matter how narrow it is, I share the concerns. As a legislator and as a former mayor, I am never convinced that Washington knows better than anybody else. So I have similar concerns. But at the same time, there are times and places where preemption is appropriate, and this may or may not be one of them. I am not sure yet.

I am curious. Mr. Norton, in particular, the role of this Director is to advise the Secretary on major domestic and international insurance policies. I think it is pretty clear that if they advise them on an international issue, and they think that the international issue is problematic, that there is a power of preemption.

What if they advise them on a major domestic issue and the advice says, hey, this is a problem. It is a redlining problem. It is a flood insurance problem. It is a major problem that may be only affecting one area, but certainly has national implications. For the sake of discussion, I am trying to make it a little easier than just on an issue that might relate to just one State.

But, you know, flood insurance, redlining, any number of issues that clearly have national implications. What if that advice comes in and says, this is really bad. This State, "X" State, has done something terrible. They are heading down the wrong road. They are going to ruin the entire insurance world. What do they do about it?

Mr. NORTON. Well, I think, as envisioned in the chairman's bill, and in our own proposal, in the Blueprint, the Treasury Secretary would have concerns. If one State were going to cause a problem for an insurance market nationally, this Office would not have the power and the Secretary would not have any power. McCarran-Ferguson would remain. The States would still—

Mr. CAPUANO. Do you envision the Secretary at least having the authority to say something?

Mr. NORTON. Absolutely. The Secretary would want to raise that issue in any forum possible, possibly in the Congress, if that is the appropriate way to address the issue, or through bilateral discussions with the State legislatures.

Mr. CAPUANO. But I am saying say something in a public manner to say, the State of Massachusetts has made a mistake on "X" insurance policy matter, and that is really a bad policy and we really should do something about it.

Mr. NORTON. Congressman, it is hard for me to comment on a hypothetical. I would say that there are—

Mr. CAPUANO. That is where I live. I live in hypotheticals.

Mr. NORTON. I understand. I think that there are times in financial markets where the Treasury Secretary probably wouldn't want to comment publicly, but maybe go directly to the insurance commissioner in the State of Massachusetts, to your hypothetical, or maybe go to the governor, or maybe go to this—

Mr. CAPUANO. Fine. He goes to them. A very nice conversation. They say, "Get lost."

Mr. NORTON. Well, that is an inherent—

Mr. CAPUANO. I guess I am asking: Do you ever envision a situation where the Secretary would have a public comment on a domestic issue?

Mr. NORTON. Well, yes. As envisioned in the bill, the Secretary of the Treasury would report, I think, once every 2 years on major policy matters. So there is a statutory requirement under the legislation.

Mr. CAPUANO. Honestly, the reason I ask is because I have a little trouble with the fact that it is only once a year. I would like to see a situation where the Secretary would be encouraged on an ongoing basis to make a statement, if deemed appropriate.

I guess to a certain extent, I think Mr. Manzullo is correct. I mean, I don't think he is wrong that this might be the beginning of looking at broader issues. I am not afraid of looking at those broader issues, though. I think it is a mistake to pretend that somehow, because today you may not want to go someplace, that you shouldn't ask questions, that you shouldn't have adequate information.

And I will point very clearly to a front page article yesterday, the Federal Reserve of New York. They just said yesterday—not on an insurance matter—that maybe it is time for us to be looking at the unregulated aspects of the private equity market. Why? Because we are now in an economic downturn that most observers will blame on the excesses of the private equity market and the fact that we didn't look at them.

And as we sit here today, we don't have anyplace—the Secretary of the Treasury, the Federal Reserve, cannot answer us on some very detailed questions we have relative to what private equity has been doing.

I don't see why this would be a concern. I understand the concerns of Mr. Kennedy on the specific issue of being at the table. I have no problem with that concept. But other than having the table adequately represented and having people have the ability to make public commentary, why would anybody be concerned about the gathering of information? Why would anybody be concerned about the ability at some point in the future of maybe taking knowledgeable information and making different policy decisions?

Who knows? Maybe they won't. Can anybody here tell me what the concern is of why you would be opposed to anybody gathering knowledgeable, technical, detailed statistical information that may or may not be used in the future?

Mr. MCRAITH. Congressman, we recognize and appreciate the need for that kind of information, and the need for that informa-

tion to be available to the Congress when needed. We supported congressional efforts to collect data about insurance company exposures after 9/11.

As I mentioned in my testimony, we have a massive—the largest insurance financial database in the world. We have information on over 4 million producers. We can work with the Congress to help Congress develop the information it needs to answer questions, as you have said, that might come up unexpectedly during a given economic cycle. Absolutely.

I would say in response to your initial question to Mr. Norton that we cannot—the question of what is appropriate for a local—for one State or another is a difficult question to answer unless you are in the State. And for that reason, insurance regulation is and should remain a local and therefore a State-based matter. What is appropriate for Ohio and Congresswoman Pryce is different from what is appropriate for Illinois and Congressman Manzullo.

Mr. CAPUANO. Thank you, Mr. Chairman.

Chairman KANJORSKI. Thank you very much.

We now have the gentleman from California, Mr. Royce.

Mr. ROYCE. Thank you very much, Mr. Chairman.

I was going to ask a question on an issue here to Mr. Norton. When President Clinton was trying to liberalize trade to open up markets overseas, in Africa and in India and South Asia, I had the opportunity to travel with him to try to advance AGOA and other issues overseas.

And during that time, I noticed that as we tried to open those markets: Commerce was there; Treasury was there; the USTR was there. Everyone had a seat at the table as we tried to open markets overseas except for insurance because we don't have a national market for it here and they are not represented.

And as you look at the attempts that we have had as sales have increased, there is one place where we have really had a setback, and that is in the insurance sector. We are having all kinds of difficulties right now with Europe, and you know a little bit about the acrimony there over the fact that they are trying to deal with 54 markets here in the United States as they try to create one national market there, and what that is creating in terms of attitudes.

But just the ability to have someone have a seat at the table, just the ability to have Treasury have the authority here to argue for opening markets, I was going to ask you, Mr. Norton, in your opening testimony you signaled that the Office of Insurance Information would establish that Federal presence and, ideally, have the authority to implement agreements here in the United States.

And I would just ask how you would envision that those agreements would be implemented. Would it take care of this glaring inequity that I see where we have a huge trade deficit? We have all received letters, I think, from the E.U. about this. We have a huge trade deficit in this area of insurance, and we have surpluses in these other areas where at the Federal level there is a seat at the table.

Would this help address this concern I have?

Mr. NORTON. Congressman, I think it is an important question. We do believe that it would help. As you know through your leader-

ship on AGOA, USTR is of course the lead negotiator on trade agreements. But when you look at financial services in the context of regulatory equivalency discussions and agreements, you are exactly right. The banking regulators and the securities regulators have more flexibility to address cross-border issues.

With regard to the authority of the Office, we do believe the authority is appropriate and carefully tailored by the chairman. But I would like to emphasize that this preemption is a last resort, that the bill calls for a thorough and elaborate process where we would work with—or the new Office would work with the NAIC, among others, the Commerce Department, the USTR, other executive branch agencies, before formulating a policy, before going overseas entering into discussions.

Should an agreement be reached, it would then go back and have an elaborate process on notice and comment. And there is time for States to implement such agreements that, in all likelihood, they were a big voice in. And we think that the balance is a good one and it does address the issues that you raised in your question.

Mr. ROYCE. Some of the foreign government officials have continued to raise issues associated with our having over 50 different insurance regulators. Some have threatened taking punitive action because of the lack of a single point of entry into the U.S. marketplace.

It has been well-publicized that the European Union Solvency II directive could severely impact the competitive business of U.S. firms operating in Europe, should Europe take retaliatory action. Of course, one of the arguments the Europeans make is that our system, our structure, is so injurious to our own position to compete that we are going to fall further behind and the U.S. industry's enormous trade deficit is going to continue to grow.

But that aside, do you believe an Office of Insurance Information would be enough to prevent U.S. companies from being punished should the E.U. try to take the type of decisive action that is being argued by their officials that deal with these trade issues?

Mr. NORTON. Well, it is certainly difficult to predict the outcome of any discussions. We do believe that this Office and the authority that, again, is carefully crafted under the chairman's bill would help in those discussions. We can look to other examples in financial services—in the securities area with Basel II, with financial holding companies and banks, the CSE regime of investment banks, are all beneficiaries of cross-border dialogues and regulatory discussions with the appropriate regulators in those fields.

So again, I don't want to prejudge how this Office may or may not help or direct the outcome in Solvency II. But it would certainly help, in our view.

Mr. ROYCE. Thank you.

Chairman KANJORSKI. The gentleman from Texas, Mr. Hinojosa.

Mr. HINOJOSA. Chairman Kanjorski, I want to thank you for holding this very important and timely hearing today. It is my understanding, and perhaps you can correct me, that the draft of H.R. 5840 completed June 4th would create an Office of Insurance Information in the Department of the Treasury. So I am going to be asking questions of Mr. Norton.

Some of the groups that oppose the legislation have characterized the new Office and its duties and powers as a way to preempt virtually all State insurance laws, excluding health insurance. And I happen to be a supporter of States' rights.

I have not taken a position on this draft bill, but I would like to have some additional information. My understanding further is that because the Office of Insurance Information will serve as a Treasury representative to the Trade Promotion Coordinating Committee, it will have the power to determine or at least influence the language included in agreements that will be entered into between the United States and foreign governments, authorities, or some regulatory entity on insurance matters, basically giving them the power to preempt any and all State laws. And that concerns me.

Mr. Norton, would you be able to provide me in writing with any insurance negotiations the United States currently has under consideration with any foreign governments, regulatory entities, with health insurance excluded? Particularly the ones that are under consideration right now with Panama, Colombia, and Korea.

Mr. NORTON. We would be happy to get back to you, Congressman.

Mr. HINOJOSA. Yes. I would like to see those and see how this insurance regulation and law, proposed law, would help us improve those negotiations and the work that is going on. I know that NAFTA was completed about 14 years ago, and there is talk about trying to bring it back up and renegotiate it.

And there certainly are proponents, as many as there are opponents, because we know that there are winners and there are losers. And so the States that are losing, of course, are not happy with it. States like mine, Texas, is a winner, and so they are certainly on the opposite side.

So if you can provide that information to me and my Office, I would appreciate it very much. And I close by commending Chairman Kanjorski for holding this hearing today, and look forward to working with you and your staff as the bill moves forward in the committee and onto the Floor. Thank you.

Chairman KANJORSKI. I thank the gentleman. I do want to assure you that we are trying to narrow the preemption as much as we can, and we have been working with the various entities to accomplish that.

Mr. HINOJOSA. Well, if you do, I think that I would be a little bit more agreeable. But at this point, I have great concerns when we, the Federal Government, try to take over those State rights.

Chairman KANJORSKI. I appreciate that.

The gentlelady from New York, Mrs. McCarthy.

Mrs. MCCARTHY. Thank you, Mr. Chairman.

Mr. Kennedy, I would just like to ask, because I am having a hard time confusing—how much on the State level as State legislators do with the compact have to do with international insurance? How does that come into the play of the State?

Mr. KENNEDY. Actually, the compact does not deal with international insurance issues. It is, you know, more about life, disability, and long-term care type insurance. But legislators sit on that particular compact. As you know, 31 States have currently joined. It is under discussion right now in the State of New York.

Our president-elect, Senator Seward from New York State, is trying to shepherd it through the New York State Senate at this point in time.

We provide what we feel is an important advisory role to that insurance compact, and we think that the compact has been one of those type of creations that, for all intents and purposes, has helped to address some of the issues about control filing of one-stop, I guess you can call it, filing for new filings for insurance and those other types of products that would go before it.

Mrs. MCCARTHY. So Mr. Norton, with the legislation that we are still working on, and being that we are deleting with basically into insurance, how does that affect the States?

Mr. NORTON. Well, I think the legislation is necessary and the Office is necessary because we want cross-border activity in insurance. And what we have found is that it is difficult for cross-border agreements to be reached because our counterparts overseas don't have anybody to talk to or reach agreement with.

And I would just add, the NAIC does a very good job of formulating policy and engaging in international discussions. But they are limited by their ability to follow up and carry those agreements back because you have to go through 50 different insurance commissioners and, in some matters, 50 different legislatures. So it is difficult to reach uniformity.

Again, the chairman's mark—

Mrs. MCCARTHY. See, that is the point I am trying to understand. We are going to international insurance. The States right now don't deal with any international insurance. So I am trying to see—because I believe in States' rights also, so I am really trying to see if the States don't deal with international insurance, and the Federal Government is trying to have a seat at the table for international insurance, how are we preempting the State on those particular issues?

Mr. NORTON. Well, I think that we would only preempt the State where—State or States—there is really discrimination against foreign-regulated entities. So if an insurance company is located overseas and is trying to do business in the United States, and a State would, say, have different laws that are applicable to that insurance company versus an insurer located domestically, that is where you get some of the tension. And this Office would help formulate policy for the United States, and would be a place where dialogue could be advanced and achieved.

Mrs. MCCARTHY. Would you agree that with a lot of Federal laws that we pass here in the United States, if the State has a stronger law, we usually go with the State law?

Mr. NORTON. I am sorry. Could you—I couldn't hear that.

Mrs. MCCARTHY. With a lot of laws that we pass on the Federal level, a lot of States—and I will talk about New York—a lot of our laws actually supersede what the Federal regulation would be. And many times, the Federal law, which is on maybe a lower level, we accept the State law.

I am just trying to see where I am going on where we are afraid that our States—we are going to overrule them when they don't have international—that is the part I am trying to clarify in my mind.

Mr. NORTON. Well, when there are issues, and reinsurance collateral could be one where providers of reinsurance are not allowed the same access into our markets or a type of more reasonable access to our markets, that has effects on the larger national insurance marketplace.

And so that is why we have highlighted reinsurance collateral as one issue that this Office could address through regulatory agreements of equivalency, and strike an agreement working with the NAIC, which has spent a lot of time on this issue and is trying hard to advance a resolution.

But it is not able to do that. I mean, the NAIC and the States have recognized the need to address this issue. So I don't think our goals are at all in conflict. The States themselves have recognized that they need to get together, discuss matters of international insurance, and try and formulate a policy, go overseas, discuss them, see if they can reach agreement.

So I think that that is not a debate among the States or the Federal Government. The question is: Can we actually get a resolution? And to date, we have not been able to because the State system is so bifurcated.

So I don't think that there is a dispute that there are issues at hand. I think the challenge is finding a way to resolve them. That is why we proposed this Office to achieve results. And we think that the bill, as introduced, achieves those goals.

Mrs. MCCARTHY. Well, the whole idea of having hearings is so that we can hear the concerns and hopefully work on the concerns that everyone has. My time is up. Sorry. Thank you.

Chairman KANJORSKI. The gentlelady from Illinois, Ms. Bean.

Ms. BEAN. Thank you, Mr. Chairman.

Most of my questions have already been asked and answered for this panel. But I did want to personally thank our home State insurance commissioner, Mike McRaith, for participating. And as the chairman alluded to, I know we are proud of what we feel is the best insurance division in the country and your job running it.

I think the fact that Illinois does have a deregulated environment has led to greater access and more consumer choice than many States around the Nation. And while I know Mike and I may disagree on the role the Federal Government should play relative to insurance regulation and/or the need for a potential national insurance commissioner, certainly his knowledge of the industry and his valiant protection of consumer concerns would make him an ideal candidate for such a role.

I would also like to thank Secretary Norton of the Treasury for providing further testimony on your Blueprint for Reform, and at least getting the dialogue started about evaluating our current structure and where we might need to update it.

So I thank you both, and I am going to save my further questions for the next panel.

Chairman KANJORSKI. Thank you very much, Ms. Bean.

Mr. Murray, the gentleman from Connecticut—Murphy, I am sorry, the gentleman from Connecticut.

Mr. MURPHY. Thank you very much, Mr. Chairman. I have no questions.

Chairman KANJORSKI. It looks like we have completed this panel. So for purposes of that, I want to thank you gentlemen for participating in today's hearing, and the panel is dismissed.

I would now like to welcome our second panel.

Mr. MCRAITH. Mr. Chairman, we do have an exhibit we would like to tender to the committee, which we will circulate, that outlines all the different committees and regulatory structures internationally that the NAIC is involved with, both directly and in a supportive role.

Chairman KANJORSKI. Excellent. We will enter it in the record. If there are no objections, the exhibit will be appropriately marked and entered into the record.

Thank you, Mr. McRaith.

Mr. MCRAITH. Thank you very much.

Chairman KANJORSKI. I am pleased to welcome our second panel. First, we have Mr. Neal S. Wolin, president and chief operating officer of property and casualty operations at The Hartford Financial Services Group, testifying on behalf of the American Insurance Association.

Mr. Wolin?

STATEMENT OF NEAL S. WOLIN, PRESIDENT AND CHIEF OPERATING OFFICER, PROPERTY AND CASUALTY OPERATIONS, THE HARTFORD FINANCIAL SERVICES GROUP, ON BEHALF OF THE AMERICAN INSURANCE ASSOCIATION

Mr. WOLIN. Mr. Chairman, members of the committee, I am testifying today on behalf of the American Insurance Association and its member companies. Mr. Chairman, I will be brief.

First let me thank the committee for providing me the opportunity to discuss the Office of Insurance Information with you today. I also want to thank you for your hard work to modernize and improve insurance regulation in the United States.

A short trip back in time makes it clear why our country needs the Office of Insurance Information. Terrorist attacks on our homeland demanded a Federal response. By creating the Terrorism Risk Insurance Act, this committee saw to it that American economic activity would not be threatened by future terrorist attacks.

The Gulf Coast and Eastern Seaboard have dealt with some of the worst natural catastrophes in our country's history. Those storms inflicted terrible harm on thousands of our citizens and damage to property resulting in tens of billions of dollars of insurance losses. These are just a few of the challenges that have affected our industry and the country in recent years.

We have also witnessed the rapid development of global commerce. The U.S. Government needs to have a designated voice on insurance matters in dealing with foreign governments and foreign regulatory bodies.

Mr. Chairman, since the start of the 107th Congress, this committee has dealt with reforming reinsurance and surplus lines markets regulation, with significant changes to and reauthorization of TRIA, with reforming and reauthorizing the National Flood Insurance Program, with a proposal to allow FEMA to sell wind coverage, with another proposal to provide Federal liquidity to State natural catastrophe reinsurance funds, with a Federal natural ca-

tastrophe fund, and with regulation of auto insurance, underwriting, and rating.

The committee is currently reviewing proposals to deal with producer licensing and to expand the Liability Risk Retention Act. In short, you have been very, very busy on insurance issues.

In all that activity on all the issues I mentioned and others, something important is missing: an accredited insurance witness at this table to offer the most appropriate and impartial advice and counsel on insurance on behalf of the U.S. Government. That same voice is needed around the globe.

The legislation we discuss today will remedy that problem. On behalf of the AIA and its member companies, I congratulate you and Ranking Member Pryce, and thank you for this bill to create an Office of Insurance Information.

I bring a perspective on this issue not only from the insurance industry, but also from the Executive Branch. Before coming to The Hartford, I had the honor of serving Secretary Rubin and Secretary Summers as Deputy General Counsel and General Counsel of the U.S. Department of the Treasury. I can assure you we would have benefitted greatly from an OII. I congratulate Secretary Paulson for supporting your efforts to create this Office.

Thank you for your leadership. The AIA and its member companies, including The Hartford, stand ready to help the committee in any way as you move forward.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Wolin can be found on page 93 of the appendix.]

Chairman KANJORSKI. Thank you, Mr. Wolin.

Next, we have Mr. Stephen Rahn, vice president and associate general counsel of the Lincoln Financial Group, testifying on behalf of the American Council of Life Insurers.

Mr. Rahn?

STATEMENT OF STEPHEN E. RAHN, VICE PRESIDENT AND ASSOCIATE GENERAL COUNSEL, LINCOLN FINANCIAL GROUP, ON BEHALF OF THE AMERICAN COUNCIL OF LIFE INSURERS

Mr. RAHN. Thank you, Mr. Chairman, Ranking Member Pryce, and members of the subcommittee. On behalf of the American Council of Life Insurers, I would like to thank you for the opportunity to present our views on H.R. 5840.

The ACLI applauds your efforts as well as those of the bill's cosponsors to explore ways in which insurance regulation can be modernized and made to operate more effectively, both domestically and globally. My testimony today will address both the bill as introduced and your recently released discussion draft.

As the ACLI has testified on other occasions before this subcommittee, more and more issues that are vitally important to our business are being debated and decided here in Congress, and all too often, Congress doesn't have an effective means of getting access to critical information on the industry as a whole, or of getting policy advice on domestic and international issues that reflects a national rather than a more parochial or State-specific perspective.

And more recently, these domestic issues have been overshadowed by international concerns that highlight the difficulty of

dealing effectively with global policy and regulatory matters through a State-based regulatory system.

Mr. Chairman, for these reasons we welcome and strongly support the creation of an Office of Insurance Information within the Department of the Treasury, and your proposal to have explicit authority vested in the Federal Government to establish U.S. policy on insurance matters. We also support giving that Office the ability to enter into agreements with foreign governments to implement Federal policy.

We believe an OII would be enormously beneficial to Congress as it considers issues that are important to our business. It would facilitate the handling of international insurance matters, and it would provide a means for effectively involving the insurance industry as national policy decisions are made affecting U.S. financial institutions.

As the ACLI reviewed the introduced version of H.R. 5840, we looked very closely at the issue of preempting State laws that are determined to be inconsistent with agreements entered into by the OII on international insurance policy matters. We formulated five principles that we believe provide prudent guidance on this point.

First, we agree with the approach of H.R. 5840 to limit the preemption to international issues where Federal policy is reflected in an agreement between the OII and a foreign jurisdiction or authority.

Second, we agree with the bill's stated intent not to create any supervisory or regulatory authority in the OII or Treasury over any U.S. insurer.

Third, the preemption should not be used in a way that leads to a real or potential solvency gap. Since the OII will not have any supervisory role, State laws that involve material solvency functions should never be preempted. I should also note that we were pleased to see in the discussion draft the addition of administrative due process language to help assure that the preemption is used only in appropriate circumstances.

Fourth, we agree with the direction the discussion draft seems to be taking by requiring the OII to consult with the advisory group before entering into any international agreements with foreign jurisdictions or authorities, or before making any determination that a State measure is inconsistent with such an agreement and therefore preempted.

Our fifth and last principle, and one where we do have some concern, is that we would not want to see the preemption result in material, unfair discrimination against any U.S. insurer. Our concern here is that the preemption can take place only to assure that a non-U.S. insurer does not receive less favorable treatment than a U.S. insurer. We don't want to see a circumstance arise inadvertently where the preemption results in the collateral consequence of treating a U.S. insurer less favorably than a foreign insurer, with no ability to employ preemption to remedy the situation.

Mr. Chairman, while our review and analysis of your discussion draft continues, we do have several specific comments on the new elements of the bills. The details are in my written statement, but briefly, they are as follows.

With respect to the collection of data by the OII, we are concerned over the expansion of this authority to include the collection of non-publicly-available information. We are also quite concerned with the elevated level of prominence the discussion draft gives to the NAIC, and its relationship with the OII. Finally, we object to the addition of the Federal Trade Commission as a member of the advisory group.

Mr. Chairman, we understand and fully appreciate your intent that the OII not be construed as a substitute for, or as a step in the direction of, an optional Federal charter. As our comments above indicate, we see significant value in the establishment of the role of the OII in and of itself, and support the creation of such an Office for that reason.

However, we want to make it clear that our support for H.R. 5840 in no way diminishes our belief that an insurance optional Federal charter, such as the Bean-Royce bill, is vitally necessary for the life insurance business, and our commitment to work with Congress to make that objective a reality.

In conclusion, Mr. Chairman, we thank you for your leadership role in addressing the issues and for advancing H.R. 5840 in this subcommittee, and we look forward to continuing to work with you and members of the subcommittee as this important legislation moves forward.

[The prepared statement of Mr. Rahn can be found on page 78 of the appendix.]

Chairman KANJORSKI. Thank you very much, Mr. Rahn.

Now I am pleased to welcome to our committee Ms. Tracey Laws, senior vice president and general counsel of the Reinsurance Association of America.

Ms. Laws?

STATEMENT OF TRACEY W. LAWS, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, REINSURANCE ASSOCIATION OF AMERICA (RAA)

Ms. LAWS. Good afternoon. My name is Tracey Laws, and I am senior vice president and general counsel of the Reinsurance Association of America. We are a national trade association representing property and casualty insurance companies that specialize in assuming reinsurance. I am pleased to appear before you today to provide the RAA's comments on H.R. 5840.

The RAA supports the spirit and purpose of this legislation, and we applaud Chairman Kanjorski and the other cosponsors for their leadership on regulatory reform issues. My comments today will focus on the legislation's potential benefits to the reinsurance industry and our suggested modifications, which we believe are necessary for the bill to achieve its stated goal.

First, the RAA strongly supports authorizing the Director of the OII to advise the Treasury Secretary on major domestic and international insurance policy issues, including reinsurance requirements. The Federal Government has a strong interest in understanding the reinsurance market as it responds to catastrophes like 9/11 and the 2005 hurricanes. The creation of the OII will fill the current lack of a lead Federal entity that understands how deci-

sions made by the Federal Government can impact the insurance industry.

Second, the RAA also strongly supports empowering the OII to establish Federal policy on international issues. The recent Treasury Blueprint noted that foreign government officials have continued to raise issues associated with having 50-plus different insurance regulators, making coordination on international insurance issues difficult for both foreign regulators and companies.

The Blueprint also noted that the NAIC's status as a nongovernmental body and the inherent patchwork nature of the State-based system make it increasingly more difficult for the United States to speak effectively with one voice on international regulatory issues.

That lack of a single voice is adversely impacting U.S. reinsurers now. For U.S. reinsurers, the E.U. Solvency II will set forth a process for determining which third countries are equivalent for purposes of their companies doing business in the European Union.

Although this issue is still being discussed, it is our understanding that the European Parliament recently obtained a legal opinion stating that the European Commission cannot grant equivalence to a U.S. State under Solvency II. Without Federal involvement by a knowledgeable entity tasked with responsibility for international policy issues, the U.S. reinsurance industry will continue to be disadvantaged in these equivalence discussions.

Third, the RAA also strongly supports the legislation's goal to authorize the OII to ensure that State insurance measures are consistent with Federal policy. It is critical that the OII be authorized to ensure that its policies are uniformly respected throughout the States by the ability to preempt any inconsistent State insurance measures. To do otherwise would perpetuate the patchwork system and undermine the ability of the United States to effectively participate in the international arena.

I would like now to focus on the RAA's two significant concerns with the current draft of the bill: the scope; and the process provisions of the preemption section.

The preemption provision is very important to the RAA, and we strongly urge that it be made consistent with the broader authority conferred on the OII to allow preemption of State insurance measures that are inconsistent with any Federal policy on international matters, not just those embodied in international agreements. Unless this occurs, States will be able to have laws, regulations, and policies that conflict with Federal policy so long as that Federal policy is not embodied in an international agreement.

We also believe there may be serious unintended consequences resulting from the preemption language. A State insurance measure is preempted only to the extent that the measure treats a non-U.S. insurer less favorably than it treats a U.S. insurer. This language sets the bar for what States can do. So long as U.S. insurers are treated the same as non-U.S. insurers, there can be no preemption. This inappropriately transfers the power to determine policy within the Federal Government to the States.

By way of example, collateral reduction is a controversial issue among various industry participants, including a lack of unanimity among State regulators on this issue. Certain insurance industry groups have argued rather than having any collateral reduction for

non-U.S. reinsurers, they would prefer to also impose collateral on U.S. entities. Under the current legislation, such a State insurance measure would not be preempted so long as the collateral requirements are imposed equally on U.S. reinsurers and non-U.S. reinsurers. Imposing collateral on U.S. reinsurers would be an enormous step backwards, and would be inconsistent with the goals of regulatory reform set forth in the Treasury Blueprint and in international insurance regulatory standards.

Our second concern relates to the process for preempting State insurance measures. We agree that there should be a process. However, the process set forth in the legislation is very extended and includes a stay provision that can negate the director's determination that preemption is warranted.

That stay provision uses extremely broad standards that allow States to have a second bite at the apple to avoid preemption after a decision-making process that provides ample opportunity for notice, comment, and appeal. The RAA would urge that the stay provision be deleted as unnecessary.

We would like to thank Chairman Kanjorski and the subcommittee for this opportunity to comment on H.R. 5840, and we look forward to working with you and the other members as this legislation moves forward.

[The prepared statement of Ms. Laws can be found on page 58 of the appendix.]

Chairman KANJORSKI. Thank you very much, Ms. Laws. We appreciate that.

And then finally, we will hear from Mr. David Sampson, president and CEO of the Property Casualty Insurers Association of America.

Mr. Sampson?

STATEMENT OF DAVID A. SAMPSON, PRESIDENT AND CHIEF EXECUTIVE OFFICER, PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA

Mr. SAMPSON. Mr. Chairman, members of the subcommittee, thank you for the opportunity to be with you today. I want to thank you especially, Mr. Chairman, for your leadership on increasing congressional knowledge about our complex industry, and facilitating global commerce and making sure American companies are not placed at a competitive disadvantage.

PCIA is a trade association with over 1,000 members representing a broad diversity, from the multi-line, multi-billion-dollar carriers to small specialty insurers that write in a single State.

Mr. Chairman, the PCIA board has not yet taken a position on the formation of an Office of Insurance Information. And while we have an open mind regarding the need for such an Office, our members do have a number of questions concerning the proposal.

Some of our members see the potential value, and have articulated that; yet others, quite honestly, have some very deep concerns. And what I would like to do very briefly is to highlight our concerns regarding the scope of the proposed Office of Insurance Information; data collection procedures in the NAIC, serving in the only named role of information provider; and the power of preemption. Let me summarize those very quickly.

Regarding the scope, although the draft legislation seems to have been very carefully crafted to narrow the scope and reach of the OII to address data collection and conformity with international agreements and treaties, many of our member companies are concerned that this Office represents the leading edge of a comprehensive Federal insurance regulatory body.

Secondly, with respect to data collection, data collection can be a very useful tool. The power of mandating information collection is a very powerful regulatory function in its own right. It can also be very expensive and inefficient.

So we would support collection of data by the OII only where it has a clear and compelling reason for collecting the data, and the costs of collecting that data do not outweigh the expected benefits of collecting the data. We don't believe that you can have someone sitting within Treasury and, just out of curiosity, making a significant data request for companies all across the country.

And finally, with respect to preemption, PCIA is concerned that the OII could circumvent the McCarran-Ferguson Act as far as treaties and agreements are concerned. And we believe that circumventing a Federal statute should only occur by legislative action, not by administrative action, because it adds uncertainty to the regulatory environment, and uncertainty in the regulatory environment is the greatest enemy for the business community.

We appreciate your leadership, Mr. Chairman. We look forward to working with you on these issues. Your efforts will help ensure we best serve consumers and foster a very strong, competitive U.S. economy. And as we continue this important debate, we encourage the subcommittee to address all of the questions that have been raised today by the companies who provide very vital insurance products.

We believe that our ability to obtain answers to those questions and clarifications will ultimately determine our board's position on the bill. And we look forward to working cooperatively with you and the committee as we go forward.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Sampson can be found on page 86 of the appendix.]

Chairman KANJORSKI. Thank you very much, Mr. Sampson. And to all of the witnesses, we appreciate your forthright testimony.

First let me thank Mr. Wolin for his comment that as a former Treasury official, he believes Treasury would benefit from this bill, from this new Office. We thank you for that. It is very difficult to get a good, positive opinion from a Treasury official, so your bringing that forward today is very helpful.

We have heard from the four witnesses, and I think they have expressed that the biggest problem is preemption. And in just the last week or two, I have heard more about preemption than I probably care to hear for the next year.

But I guess I want to throw out a general question: Do you have any idea how we could work through this quickly? We have a very small window here for this legislation to proceed through the House and through the Senate. Is this element the killer? Or is there some way that we could gain the benefit of some of the witnesses here and the organizations represented here to move with

this process to craft preemption to the extent that it would be readily acceptable to so many of the different opinions of the committee and Members of the House and eventually the Senate?

Anyone who wants to grab that question and run with it or throw it back at me is perfectly welcome to do so. Yes?

Mr. RAHN. Well, Mr. Chairman, I guess I will start. You know, on behalf of the ACLI, again we are supportive of what you are doing here in creating the Office of Insurance Information and also working to address the international issues.

We have worked hard since the bill has been introduced in the various versions to craft these principles, and I know that we are committed to working with your staff to help translate that into new legislative language that we would hope would begin to address those principles. So I think we stand ready to help you in that regard.

Ms. LAWS. On behalf of the RAA, the preemption provision is very important to our members. We would certainly like to see it strengthened, but at a minimum, we would need to see the preemption provision stay in the bill. And we look forward to working with you to see how we can modify it to come to the kind of consensus that you need because we also would like to see this bill move forward quickly. So we have every incentive to assist you in any way that we can in accomplishing that.

Chairman KANJORSKI. And it is readily concedable to you, I think, that if we do not have preemption in there, we are just passing toothpaste. Is that correct? I mean, it will be—

Ms. LAWS. I don't know if I would have said it that way, but that works.

Chairman KANJORSKI. Thank you.

Yes, Mr. Sampson? Do you want to get your 2 cents in on preemption?

Mr. SAMPSON. Well, on preemption, I think the best I could do today would be to offer to make our staff lawyers available to work with your staff on seeing if there is a way. I think our general concern, however, though, is the administrative preemption process as opposed to a legislative preemption process. And so we would be happy to consult with your staff with our staff attorneys.

Chairman KANJORSKI. I would certainly appreciate that. As I previously indicated, we are under terrible time constraints here, and I see a window of opportunity. However, if we do not move this Office through, it is highly unlikely that we are going to get a good start in the next Congress—at least the Congress will not have a good start, those of us who are still here.

We really want to encourage that to happen because I am more acutely aware every day, with the meetings I am having with various international officials, that we are running the risk of being noncompetitive as an industry in the world market. It is our own fault because of our by failure to keep up to speed with what other nations in the world are doing and expect us to respond with.

But as anything that grows like topsy, when you try and put it into some format that is understandable and logical, it presents some significant challenges. We recognize that we may have challenges, but I certainly urge you all to help us as much as you can. Feel free to direct your questions to the staff or myself, and any-

thing you see when we are going awry, certainly give us a call on it.

And now I have had my 2 cents. Mr. Royce of California, would you like to put your 2 cents in?

Mr. ROYCE. Yes. I will throw in 2 cents, Mr. Chairman, 2 bits.

I was going to ask Mr. Wolin, as I am going over his testimony here, if he could explain his objection to the FTC being a member of the advisory group. I just wanted to understand that.

Mr. WOLIN. Congressman, it is really just a point about the FTC not having authority presently with respect to the insurance industry. We think that people on the advisory groups, representatives, ought to represent perspectives that are currently expert in insurance. As we understand it, that is really the point of the advisory group and of the Office itself.

So it is really from that perspective, Congressman, that we suggest that there are more appropriate members of the advisory group that should be included.

Mr. ROYCE. Mr. Rahn, you wanted to add something?

Mr. RAHN. If I may, because we had also recommended that the FTC not be included for similar reasons that were just stated. Congress really removed the Federal Trade Commission from the business of insurance about 28 years ago, so it really has no expertise in that.

If the issue is to try to bring a consumer perspective on these things, we think there are other groups that you could reach out to that would bring that to the advisory committee.

Mr. ROYCE. I see. All right.

Let me ask Ms. Laws a question, if I could, Tracey. If Congress were to move forward with the creation of an Office on International Insurance, in what ways would it improve your company's ability to operate in the global marketplace and address these same issues?

Ms. LAWS. Thank you for that question. Most of our companies do business on a global basis and manage their capital on a global basis. The ability to have a Federal seat at the table to talk with other regulatory bodies, to enter into supervisory authority agreements that enhance the ability for cross-border reinsurance transactions, is certainly to the benefit of our companies.

And I might add it is to the benefit of the consumers in the United States. We are the largest consumer of property casualty insurance in the world, and you need the entire global reinsurance market in order to satisfy that need.

Mr. ROYCE. Would you have any concern about what that Office would be able to study and analyze, or what they wouldn't be able to study and analyze, for that matter?

Ms. LAWS. As the bill is currently constituted?

Mr. ROYCE. Right.

Ms. LAWS. It seems like they have broad authority to study and look at all international issues at this point. It seems pretty broad.

Mr. ROYCE. So you think that is addressed pretty well? All right. Well, Mr. Chairman, I will yield back.

Chairman KANJORSKI. Thank you very much, Mr. Royce.

And we will have Mr. Scott of Georgia.

Mr. SCOTT. Thank you very much, Mr. Chairman. And again, welcome to the committee.

As I mentioned in my opening statement, our NARAB bill has about half of this committee, both Democrats and Republicans, who are joined in as cosponsors. We feel, and we are very hopeful, with the chairman's blessings and guidance, that it will be included as a part of the entire package for insurance reform that we are working on.

And with that in mind, with that level of support and interest that we have in this committee, I thought it might be interesting to get a comment from a couple of you, particularly you, Mr. Sampson, because as I understand it, many of the companies which you represent do utilize insurance agents. Is that correct?

Mr. SAMPSON. Yes. And our board recently endorsed in concept the NARAB II proposal. Obviously, as with any piece of legislation, the devil is always in the details. And we did articulate some specific concerns. But we do believe that the NARAB II proposal would be of significant benefit to our member companies.

Mr. SCOTT. That is very good, and good to hear. And certainly, for those of us who are working on this issue, it is good to know of that level of support.

And Mr. Wolin—is that correct, Wolin?

Mr. WOLIN. Yes.

Mr. SCOTT. As I understand it, independent agents serve as a distribution force for your products as well. And I wonder if you might comment on the usefulness of our legislation.

Mr. WOLIN. Sure, Congressman. Speaking as the president of The Hartford's property and casualty companies, we have been for our almost 200-year history an independent agency company. And we support legislation that will make it easier for our agents, and for that matter, for us, to do business in the licensing area. So that is where we stand.

Mr. SCOTT. Very good.

Thank you very much, Mr. Chairman. I yield back my time.

Chairman KANJORSKI. Thank you very much, Mr. Scott.

The gentlelady from Illinois, Ms. Bean.

Ms. BEAN. Thank you, Mr. Chairman.

I am particularly interested in learning a little more about the preemption language in the new draft of H.R. 5840, and how it might apply to State insurance measures today.

If Congress enacted the draft version of H.R. 5840 tomorrow, what current State insurance measures that are inconsistent with "international insurance matters" would that new law preempt? And what future State insurance measures might this preemption apply to? Do you envision it applying to solvency laws? Could it apply to accounting standards?

Ms. LAWS. I will go first. It is our understanding, as Treasury testified, that this is in terms of regulatory agreements. So it would be on a prospective basis. And because of the detailed process that allows for the input by the board, it seems like they would have input into the actual agreement that might be drafted. And so the process could take care of taking concerns of State laws.

I am always a little bit confused when people talk about State solvency laws. The purpose, or one of the main purposes, of regula-

tion, and certainly with reinsurance, is solvency. And I think that can be construed very broadly. So I think it is important to focus on exactly what the specific laws would be. But I think the process would take care of it, and it would be prospective.

Ms. BEAN. Mr. Wolin?

Mr. WOLIN. Congresswoman, I think that the best example is probably in the collateral area that Deputy Assistant Secretary Norton spoke of earlier on the first panel.

As Ms. Laws has suggested, though, I think in order for the preemptive effect to take place, you would first need an international agreement and for this Office to set policy, and then to see where State laws conflict with whatever that agreement and policy happens to be.

But I think collateral is an area where different States have taken different approaches, and calls out for this idea of the United States speaking with one voice and having one position on matters that deal with international insurance issues.

Ms. BEAN. Mr. Rahn, did you want to comment?

Mr. RAHN. I think you began with a proposition that currently you have no Federal agency that has responsibility for setting policy on international issues on insurance, and the fact that there is currently no authority for preemption of any State laws.

And so I think looking forward, you have looming out there—you have Solvency II, you have collateral, reinsurance collateralization, as issues that need to be addressed. And they are enormous issues from a public policy perspective because depending upon the direction that those go, it could affect how insurance companies in this country—for example, where they want to locate, where they want to operate.

So I think the key is to have someone to focus on those issues, to look at the laws that should be preempted, but do it in a way that is consistent with our principles. Don't disadvantage U.S. insurers. Don't create any solvency problems. And also, then, help address a major regulatory issue.

Ms. BEAN. Mr. Sampson?

Mr. SAMPSON. I think the primary issue—

Ms. BEAN. And if there are any current State measures that you think this would apply to, I would also like to get that, not just looking forward.

Mr. SAMPSON. I am sorry?

Ms. BEAN. If there are any current State measures that you think this would apply to as well.

Mr. SAMPSON. I understand that there may be some issues as to where a ceding insurer can get credit for reinsurance only under certain circumstances. But we would be happy to provide you more specific details on that.

Ms. BEAN. Thank you. I don't have anything further.

Chairman KANJORSKI. Thank you very much, Ms. Bean.

Now we will hear from the gentleman from Connecticut, Mr. Murphy.

Mr. MURPHY. Thank you very much, Mr. Chairman.

Mr. Wolin, I want to take advantage of your unique status of having been inside Treasury and now out in the industry to just

maybe expand a little bit on your comments at the outset of your testimony as to the barriers that exist right now within Treasury.

They are frequently appearing before this committee, as you have noted, on a dizzying array of insurance proposals that we have seen just in the last year-and-a-half. But I think it would be instructive to hear a little bit more on some of the barriers that exist right now to having that type of full participation that we are inevitably going to continue to need as we rehash a lot of the proposals that we have seen in the last 16 months.

Mr. WOLIN. Thank you, Congressman. The principal barrier is that there really isn't a unit within the Treasury that has developed expertise, that has staff, that has resources, that has authority to collect data, to analyze it, and to be an advisor to the President and the Secretary of the Treasury on the one hand, and to this committee and to others in Congress on the other.

And I think the principal barriers are really those—expertise, staff, resources, and then the capacity to bring data and information together to formulate those judgments and to exercise therefore that advice function.

Mr. MURPHY. This question is sort of keyed off of some of your testimony, Mr. Wolin. But I will open it up to the panel. I am particularly interested in the new regulatory structure that the E.U. is in the process of developing. And the suggestion in your testimony, Mr. Wolin, is that this is something that we need to be particularly concerned about and may sit at a particular disadvantage, given our State regulatory structure.

And I am interested as to how this Office might help facilitate that conversation. Without full regulatory oversight from a Federal agency through OFC, how might this new Office be able to help our industry in what is going to be potentially a difficult conversation with the new European standards that we are about to be living under?

Mr. WOLIN. Congressman, I think the principal way in which it can assist is to create one place, one focal point, with what foreign regulators, in this case the E.U., can interact with us and where we as a country can speak with one voice in the other direction so that from a policy perspective, in figuring out how to structure and then to think about and then structure the regulatory environment here and how it interacts with the European regulatory structure, that we have coherence as opposed to a multiplicity of voices, which is very, very difficult to deal with—in fact nearly impossible to deal with—when you are talking about international conversations about regulatory topics, in this case in the insurance industry.

Mr. MURPHY. And specifically with regard to Solvency II, is it too late for that conversation to happen? Is it too late for us to have that one singular voice with an effective seat at the table?

Mr. WOLIN. I am not sure that it is too late, Congressman, but it is getting on toward the witching hour, is how I would say it.

Ms. LAWS. Congressman, if I could just add on, I agree with everything Mr. Wolin said. And the specific example would be from my testimony regarding the reinsurers. They are deciding now, under Solvency II, how reinsurers that are not domiciled in the E.U. will be able to do business in the E.U., how the equivalence standard is going to work.

They have had interaction with the NAIC, but the NAIC does not speak for the United States. I have talked about the problems, it appears, from the legal opinion and how they are not going to grant equivalence to a U.S. State under Solvency II. From the U.S. reinsurer's perspective, having that single voice with the authority to negotiate would be critical.

And to answer your timing question, yes, it doesn't go into effect until 2012. But the decisions are being made now so that it can then go through the implementation process.

Mr. MURPHY. Mr. Rahn?

Mr. RAHN. I would just agree with—yes, thanks. I don't want to take your time, but I agree with what has been said. And it may be late, but it is certainly better late than never, as they say, and I think that this will move things forward.

But don't lose sight of the advantage they will have for the domestic issue, on domestic issues, too. Because currently Congress has no place to go for information that this Office could collect on domestic insurance issues.

Mr. MURPHY. Thank you very much, Mr. Chairman.

Chairman KANJORSKI. Thank you very much, Mr. Murphy.

Well, I think we have completed the hearing. Does anyone else have any additional questions? Ms. Bean, are you satisfied? Okay.

The Chair notes that some members may have additional questions for this panel which they may wish to submit in writing. Without objection, the hearing record will remain open for 30 days for members to submit written questions to these witnesses and to place their responses in the record.

Before we adjourn, the following written statements will be made part of the record of this hearing: The American Home Ownership Protection Coalition; the National Association of Mutual Insurance Companies; and Mr. Eric Gerst. Without objection, it is so ordered that the statements are submitted and entered into the record.

The panel is thanked and dismissed, and this hearing is adjourned.

[Whereupon, at 12:26 p.m., the hearing was adjourned.]

A P P E N D I X

June 10, 2008

U.S. Congresswoman
Ginny Brown-Waite
Representing Citrus, Hernando, Lake, Levy, Marion, Pasco, Polk, and Sumter Counties

Subcommittee on Capital Markets, Insurance, and GSES Hearing, "H.R. 5480, the Insurance Information Act"
June 10, 2008
Statement for the Record

Thank you Mr. Chairman for holding this hearing today. And thank you to the witnesses who have come before us.

As you know, insurance, specifically property and casualty insurance, is one of the biggest issues facing Floridians today. Our state has grappled with affordability and availability issues throughout the past decade and a half, and we still see no end in sight.

Therefore, any legislation that would affect a state's role in insurance regulation is important to Floridians.

I recognize that the insurance markets in the United States are fragmented. And while I was not here during the 9/11 attacks, I can imagine how difficult gathering information from 50 different states would have been. I agree that a centralized office providing insurance expertise is something Congress needs.

However, I am leery of an office that supersedes state laws, particularly when it comes to insurance. I appreciate the efforts that Mr. Kanjorski has made to tailor this bill specifically to address issues relating to foreign insurers, but we need to tread lightly here.

I am interested in what the witnesses have to say about this important legislation, and I look forward to hearing from them.

Again, thank you Mr. Chairman, and I yield back the balance of my time.

ANDRÉ CARSON
7TH DISTRICT, INDIANA

COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON
FINANCIAL INSTITUTIONS AND CONSUMER CREDIT
SUBCOMMITTEE ON
DOMESTIC AND INTERNATIONAL MONETARY
POLICY, TRADE AND TECHNOLOGY
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Financial Services Committee
Capital Markets, Insurance and Government Sponsored Enterprises Hearing: "HR 5840, the Insurance Information Act of 2008"
Opening Statement for Congressman André Carson
June 10, 2008

Thank you, Chairman Kanjorski and Ranking Member Pryce for holding this hearing today regarding the proposal in H.R. 5840 to create an Office of Insurance Information (OII) within the Department of Treasury.

Confusion regarding insurance regulation in the aftermath of the terrorist attacks on September 11th 2001 and Hurricane Katrina serves as evidence that we need a better resource on a Federal level that collects and analyzes data on the industry, issues reports and provides Congress with information on issues within the industry. The OII would fill that gap make Congress more responsive in national crisis by providing us with comprehensive information on property, catastrophe or casualty insurance issues as we are construct policy decisions.

Further, we need to work to preserve the competitiveness of the United States in the international market. The mediocre U.S. position in the international insurance market is at odds with our success in other financial sectors. As consolidations within the industry abroad grow and those entities take greater hold of the market share, investment in the U.S. reinsurance market, for example, is stagnant due in part to rigid collateral requirements for alien reinsurers.

H.R. 5840 would authorize the OII to become a point of contact on the Federal level for foreign governments to reach out to regarding international insurance issues. The complexity in the U.S. insurance market resulting from disparate regulations imposed in each of the 50 states is seen as burdensome to overseas companies wishing to operate within the United States. This is a growing concern especially as the European Union (EU) has taken many strong steps to make a uniform, simplified regulatory structure.

The EU has issued two new overhaul directives, Solvency II which largely mirrors the Basel II Accord and a new reinsurance directive to enable reinsurers once they are licensed under their EU country of origin's licensing standard to do business with without further registration requirements. Our insurance industry must figure out how to adapt to movements abroad like the EU's directives in order to leverage a better position for U.S. companies moving forward.

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The OII as envisioned in H.R. 5840 would be a great resource in that effort and would help create a level playing field in international negotiations to foster foreign investment in our insurance market.

Finally, there is some contention within the industry on the scope of the authority of the OII regarding state preemption on international issues. In order to make sure this is sound policy, we must examine the extent to which, if any, this preemption authority would infringe state regulation on domestic issues. I look forward to the discussion of this matter in today's hearing.

I would like to thank the witnesses for participating and I look forward to your testimony.

OPENING REMARKS OF THE HONORABLE RUBEN HINOJOSA
SUBCOMMITTEE ON CAPITAL MARKETS
HOUSE COMMITTEE ON FINANCIAL SERVICES
HEARING ON "H.R. 5840, THE INSURANCE INFORMATION ACT OF 2008"

Chairman Kanjorski, I want to thank you for holding this very important and timely hearing today. You and your staff always seem to have your finger on the pulse of the capital markets system, and today's hearing reflects that fact.

I want to commend you for introducing H.R. 5840, which would establish an Office of Insurance Information in the Department of the Treasury. I have had my staff read the bill and consult with me on it last night.

It is my understanding, and perhaps you can correct me, that the draft of H.R. 5840 completed on June 4th, would create an Office of Insurance Information in the Department of Treasury. It is also my understanding that the Office basically would have the authority to preempt state insurance laws – excluding health insurance – if those state laws were deemed to be contrary to treaties or other agreements the United States has entered into with a foreign government, authority or regulatory entity.

Some of the groups that oppose the legislation have characterized the new Office and its duties and powers as a way to preempt virtually all state insurance laws, excluding health insurance.

I have not taken a position on the Draft bill, nor have I stated my position on the idea of a new Office of Insurance Information to those who have visited my office to discuss the proposal on insurance issues, mainly because the draft just became available.

My understanding is that because the Office of Insurance Information will serve as a Treasury representative to the Trade Promotion Coordinating Committee, it will have the power to determine, or at least influence, the language included in agreements that will be entered into between the United States and foreign governments, authorities or regulatory entities on insurance matters. Basically, the proposal gives the Office of Insurance Information the power to preempt any and all state laws. I support states rights, allowing them to have the power and ability to oversee their insurance sector.

To help me take a position on this legislation, I would like today's witnesses to provide me in writing with a list of current agreements/treaties the U.S has entered into with foreign governments, authorities and/or regulatory entities on insurance of all kinds, excluding health insurance. The titles and brief description will suffice.

I also would like today's witnesses to provide me in writing with any insurance negotiations the U.S currently has under consideration with any foreign governments, authorities or regulatory entities. The titles and brief description will suffice.

Some groups in my district have expressed concern with any and all legislation that could preempt state laws on insurance. Hopefully today's witnesses will shed some light on the

concerns that have been raised by small insurance entities in not only my district but in others around the country.

Again, I commend you, Chairman Kanjorski, for holding today's hearing and look forward to working with you and your staff as the bill moves forward in Committee and to the floor.

Thank you.

PRESIDENT: REP. BRIAN KENNEDY, RI
PRESIDENT-ELECT: SEN. JAMES SEWARD, NY
VICE PRESIDENT: REP. ROBERT DAMRON, KY
SECRETARY: REP. GEORGE KEISER, ND
TREASURER: SEN. CAROLE LEAVELL, NM

STATEMENT OF THE
NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL)

BEFORE THE
SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE, AND GOVERNMENT
SPONSORED ENTERPRISES
COMMITTEE ON FINANCIAL SERVICES,
UNITED STATES HOUSE OF REPRESENTATIVES

HEARING ON
"H.R. 5840, THE INSURANCE INFORMATION ACT OF 2008"

TUESDAY, JUNE 10, 2008

THE HONORABLE BRIAN P. KENNEDY
RHODE ISLAND HOUSE OF REPRESENTATIVES
NCOIL PRESIDENT
CHAIR, RHODE ISLAND HOUSE CORPORATIONS COMMITTEE

EXECUTIVE DIRECTOR: [illegible] NATIONAL OFFICE: [illegible] WEBSITE: [illegible]
E-MAIL: [illegible] WASHINGTON OFFICE: [illegible]

INTRODUCTION

Good morning Chairman Kanjorski, Ranking Member Pryce, and Members of the Subcommittee. Thank you for inviting me to testify before the Subcommittee on the very important subject of insurance regulatory reform.

I am Rhode Island State Representative Brian Kennedy and I chair our House Corporations Committee that has jurisdiction over insurance issues. I serve as President of the National Conference of Insuranee Legislators' (NCOIL).

NCOIL is an organization of state legislators whose main area of public policy concern is insurance. NCOIL legislators chair or are members of the committees responsible for insurance legislation in their state houses. NCOIL states represent a large majority of the premium volume written in the U.S.

LACK OF A LEGISLATIVE PRESENCE

When commenting on the structure, scope and potential impact of H.R. 5840, NCOIL finds it hard to close its eyes and ignore the lack of any state legislative presence in the Congressional bill. We must say that it is incongruous that state legislators—who have shaped by statute the innovative and financially robust insurance marketplace that exists today—are nonexistent in this proposal.

It is ironic that the burden of proof would lie on states to stave off preemption of the very laws that successfully steered the insurance sector through the pitfalls faced by many other financial services sectors. State laws regarding solvency have made the insurance arena more stable than the banking market, for instance, which—under federal regulation—was rocked by the savings and loan scandals of the 1990s and by the sub-prime lending crisis of today.

Federal initiatives have often fallen short of their goals due to their disconnect from consumers. ERISA has created a bifurcated system that ties the hands of state legislators trying to help desperate constituents. The Federal Emergency Management Agency (FEMA) has struggled to respond effectively to communities wracked by natural and other hazards. The National Flood Insurance Program (NFIP) has evolved into a debtor program that is challenged to meet the needs of modern homeowners.

NAIC ROLE

While acknowledging that the NAIC is a repository for insurance information, NCOIL believes that giving such a primary role to the NAIC in the OII Advisory Group in effect allows "the tail to wag the dog." Regulators, with their technical expertise, are authorized by legislators to interpret and enforce the statutes that we develop to regulate our respective insurance markets. In practice, H.R. 5840 would permit the NAIC and insurance regulators—via the Advisory Group—to weigh in on proposed federal international insurance agreements that would preempt the laws that we, as elected officials, write and that they, as appointed administrators, regulate—without the checks and balances provided by a legislative body.

We also find it unprecedented that such authority would be provided by the federal government to a private trade association, or to what immediate past NAIC President Walter Bell (AL) declared in an April 9, 2007, letter is "**a 501(c)(3) non-profit corporation with voluntary membership and [that] is not a state government entity**." This president went on to say that "**When individual insurance commissioners gather as members of the NAIC, they are not considered a governmental entity or public body as defined by the various Open Meetings Laws, but rather are a private group. As an organization, the NAIC does not have any regulatory authority.**"

H.R. 5840 would authorize the OII to serve as a liaison between the Federal Government and the NAIC—but not the legislators, NCOIL, or any other national legislative organization —on national and international insurance issues, and would require that annual reports from the OII Director to Congressional Committees be completed "in consultation with" the NAIC. This is a dramatic enhancement of the authority for this non-governmental entity known as the NAIC, which comes at the expense of the state officials to whom they are accountable.

Like our federal counterparts, state lawmakers do not take ceding authority to an executive branch lightly. This is evidenced by Congress' recent reaction to the Bush Administration's August 17, 2007, directive regarding enrollment in the State Children's Health Insurance Program (SCHIP). Congress did not appreciate when a regulatory agency overstepped its bounds, but in this case, Congress is expecting State legislators to, in effect, cede authority to a private trade group that currently has no regulatory authority.

SCOPE OF OII

NCOIL questions the scope of public policy to be considered by an OII. As stated in the bill, H.R. 5840 would authorize the OII to collect, analyze, and advise on "major domestic and international insurance policy issues." If the sponsors are not looking to lead to a more dangerous and duplicative regime, the legislation should clarify that the OII's domestic role is limited to that of a database clearinghouse.

The word "advise" means "to recommend" and indicates that the duties of the OII may be broader than simply offering insurance-related data. Though it does not appear to be Congress' intention, we fear that "mission creep" could occur at the OII as a future Director recommends a course of action that preempts strong state insurance laws. This could have dramatic, unfortunate implications for consumers and our constituents.

For instance, the bill lists catastrophe insurance as a particular area of OII interest. Catastrophe coverage is a deeply local, community-specific market that must be regulated at the state level. Local oversight and swift response is critical to consumers in need. H.R. 5840 also singles out financial guaranty insurance—a market that affects the bonding ability of our local governments and determines whether schools are upgraded, hospitals are built, and bridges are made safe, among other projects.

While the amended legislation defines a process for preempting state laws—and includes reasons why it might he wrong to do so—we remain concerned with the scope of the "international insurance matters" that could lead to preemption. These matters, which are not defined in the

discussion draft, may be broad enough to include areas such as accounting, life insurance reserving, or property issues that generally are regarded as domestic policy.

FUTURE OF INSURANCE REGULATION

NCOIL is concerned that H.R. 5840 inadvertently could lay the foundation for ill-advised federal approaches to insurance regulation, such as an Office of National Insurance (ONI) and an Optional Federal Charter (OFC). We note that in your previous statements you have questioned the practicality of an OFC for all lines of insurance. While we recognize that H.R. 5840 says it should not be interpreted to authorize the federal regulation of insurance, we believe that the OII would establish a framework that a future Congress could build upon to create and empower a federal insurance regulator, contrary to your original legislative intent.

To use a sports analogy, we believe that establishing an OII and not expecting an OFC is like paving a field, erecting two basketball hoops, and asking people not to play. As the infamous line from *Field of Dreams* goes, "if you build it, they will come."

OFC or ONI proposals would not take two steps forward, as proponents claim, but would take three steps back. They sacrifice important state protections in favor of untested federal bureaucracies that would cost more than advocates suggest. They have the potential to lead to a morass of state and federal directives, jeopardize state premium tax revenue, compromise guaranty funds and other market safety nets, negatively impact smaller companies, and ignore all that states have achieved to streamline their systems.

We also respectfully note that Congresswoman Melissa Bean (D-IL) and Congressman Edward Royce (R-CA), co-sponsors of your OII legislation and primary sponsors of H.R. 3200, the *National Insurance Act*, which would create an OFC, have publicly stated that H.R. 5840 would be a step toward creating an OFC.

Thus, OFC supporters eventually would argue that creating an OFC is not the unprecedented, landscape-changing effort that OFC opponents—NCOIL included—know that it would be. They would say that a foundation is already in place for a federal regulator and that all Congress really would need to do is expand the authorities already granted to the OII.

OPEN QUESTIONS

Beyond concerns already discussed, NCOIL feels that H.R. 5840 leaves open questions regarding the responsibility for consumer protections and the enforcement of federal policy. Would the states remain central to consumer protection when their laws are preempted, or would they simply bear the brunt of consumer frustrations if/when consumers are harmed by a new federal agreement? Would states be left holding the bag regarding enforcement of federal policy? Would states realistically have the power under the notice-and-comment process to fight off ill-advised federal public policy recommendations?

STATE-BASED REGULATORY SUCCESSES

As you know, NCOIL strongly supports the state-based system of insurance regulation. We believe that experienced state officials—who are closer in proximity to consumers than their federal colleagues—can more effectively regulate the insurance industry and better serve

constituents. Like you, we recognize that insurance regulation must be modernized in a few targeted areas, and we urge you to continue to allow states to be the "laboratories of democracy." States are working—and will continue to work—to streamline regulation where appropriate, including in producer and company licensing, speed-to-market for insurance products, rate regulation, and market conduct surveillance and analysis.

The success of the Interstate Insurance Product Regulation Compact proves that states can effectively enact innovative reform. In a remarkably short period of time, the Compact came into being when it met its threshold of 26 states and/or 40 percent of premium volume in 2006. Legislators offered critical input during its development and today sit on a Legislative Committee that helps guide Compact efforts, much as we believe legislators should have a role in any insurance regulatory advisory group. The Compact is an independent mechanism of the states—not run by any regulatory or legislative organization—and is responsible to its now-31 member jurisdictions. The Compact addresses an important element of financial modernization, providing speed-to-market by providing one central filing point for life insurance, annuities, disability income, and long-term care insurance products.

CONCLUSION

We appreciate the work of this Subcommittee to investigate the insurance regulatory environment and to provide interested stakeholders with an opportunity to comment on the proposed H.R. 5840, the *Insurance Information Act of 2008*.

NCOIL asks that you consider what states have already accomplished when moving forward with your deliberations. State legislators, with the assistance and advisement of our state insurance regulators, have created a vibrant insurance marketplace where companies are competitive and consumers, our mutual constituents and investors are protected in their daily transactions.

Thank you for the opportunity to address this Subcommittee, and I look forward to your questions.

REINSURANCE
ASSOCIATION
OF AMERICA

STATEMENT

TESTIMONY

OF

TRACEY W. LAWS
SENIOR VICE PRESIDENT
AND GENERAL COUNSEL
REINSURANCE ASSOCIATION OF AMERICA

H.R. 5840, THE INSURANCE INFORMATION ACT OF 2008

BEFORE

FINANCIAL SERVICES SUBCOMMITTEE
ON
CAPITAL MARKETS, INSURANCE AND GOVERNMENT SPONSORED ENTERPRISES

June 10, 2008

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My name is Tracey Laws and I am Senior Vice President and General Counsel of the Reinsurance Association of America (RAA). The RAA is a national trade association representing property and casualty companies that specialize in assuming reinsurance. The RAA membership is diverse, including large and small, broker and direct, US companies and subsidiaries of foreign companies. RAA members are licensed, authorized or accredited in all US jurisdictions. I am pleased to appear before you today to provide the RAA's comments on H.R. 5840, the Insurance Information Act. By introducing H.R. 5840, Chairman Kanjorski has thoughtfully laid the foundation to ensure that the Federal government has: 1) an appropriate understanding of the complexities of insurance and reinsurance issues and how policy decisions may affect those markets and 2) the authority to establish international insurance policy. The RAA supports the spirit and purpose of this legislation and we applaud Chairman Kanjorski and the other cosponsors for their leadership on insurance regulatory reform issues. My comments today will focus on H.R. 5840's potential benefits to the reinsurance industry and the RAA's suggested modifications to the legislation, which we believe are necessary for the bill to achieve its stated goals.

BRIEF BACKGROUND ON REINSURANCE

Reinsurance is commonly referred to as insurance for insurance companies. The US is the largest consumer of property and casualty insurance in the world. Reinsurance plays a critical role in maintaining the financial health of the insurance marketplace and ensuring the availability of property/casualty insurance for US citizens and businesses. One of the most important

purposes of reinsurance is to protect insurers from catastrophic losses resulting from various perils, including hurricanes, earthquakes, fire and floods. To that end, reinsurers have assisted in the recovery after virtually every major US catastrophe over the past century. By way of example, 60% of the losses related to the events of September 11 were absorbed by the reinsurance industry and 61% of the 2005 hurricane losses were ultimately borne by reinsurers.

Reinsurance is a global business. This can be best illustrated by the number of reinsurers assuming risk from US cedents. Encouraging the participation of reinsurers worldwide is essential to providing much needed capacity in the US for both property and casualty risks. In 2007, more than 2,300 foreign reinsurers assumed business from US ceding insurers. Those 2,300 reinsurers were domiciled in more than 75 foreign jurisdictions.[1] Although the majority of US premiums ceded offshore is assumed by reinsurers domiciled in a dozen countries, the entire market is required to bring much needed capital and capacity to support the extraordinary risk exposure in the US and to spread that risk throughout the world. Foreign reinsurers now account for 56% of the US unaffiliated premium ceded to professional reinsurers. That figure has grown steadily from 38% in 1997.

Reinsurance is currently regulated on a multi-state basis which is cumbersome and less efficient for a global marketplace. Complying with fifty states' often inconsistent and conflicting laws unnecessarily makes compliance burdensome and expensive for this global business. The current state-based system is primarily focused on regulating market conduct, contract terms and rates and protecting consumers. Significantly, none of these objectives apply to reinsurance business-to-business transactions. Rather, reinsurance regulation should focus on ensuring the reinsurer's financial solvency so that it can meet its obligations to its ceding insurers.

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[1] Reinsurance Association of America (RAA), Offshore Reinsurance in the US Market 2007 Data (2008).

The RAA supports a reinsurance regulatory system that creates a single national regulator with a single set of rules that will focus on efficient and effective solvency regulation. We also support a process for the national regulator to vet the equivalence of and to recognize on a reciprocal basis non-US regulatory regimes. This process would facilitate cross-border transactions and address the collateral issue.

Because of the global nature of our business, and the important role that reinsurers play in catastrophic events, the RAA wholeheartedly agrees with Chairman Kanjorski's statement that an Office of Insurance Information ("OII" or "Office") is necessary to assist Congress and the Federal government in making better decisions regarding international and national insurance policy and in enforcing international agreements uniformly across the US.

THE OFFICE OF INSURANCE INFORMATION

Advising on Domestic and International Policy Issues and Establishing Policy on International Insurance Issues

The RAA supports the legislation's goal to provide authority for the Treasury Department to: 1) collect and analyze data on insurance; 2) advise the Secretary of Treasury on major domestic and international policy issues; and 3) coordinate Federal efforts and establish policy on international insurance issues.

The RAA appreciates and strongly supports the legislation's authorization of the Director of the OII to advise the Secretary of Treasury on major domestic and international insurance policy issues, including reinsurance requirements. The global reinsurance industry plays a major role in the stability of the US insurance marketplace as well as in the economic recovery of the

US following major natural and man-made disasters. The Federal government has a strong interest in understanding this important market as it responds to these crises. The creation of the OII will fill the current lack of a lead Federal entity that understands how decisions made by the Federal government, including Congress, can impact - both positively and negatively - the insurance industry. The OII would have the benefit of the NAIC's information and experience but would be empowered to conduct its own analysis and provide advice based on a broader perspective that is not driven by individual state interests.

The RAA also believes it is critical that the Treasury Department be empowered to coordinate Federal efforts and establish Federal policy on international issues. The recent US Treasury's Blueprint for Financial Regulatory Reform ("the Treasury Blueprint") noted that the US state-based insurance regulatory system creates increasing tensions in this global marketplace, both in the ability of US-based firms to compete abroad and in the allowance of greater participation of foreign firms in the US market. Foreign government officials have continued to raise issues associated with having at least 50 different US insurance regulators, which makes coordination on international insurance issues difficult for foreign regulators and companies.

The Treasury Blueprint also noted that, while the NAIC attempts to facilitate communications among the states on international regulatory issues, it is not a regulator. The Blueprint further noted that because of the NAIC's status as a non-governmental coordinating body and the inherent patchwork nature of the state-based system, it will be increasingly more difficult for the US to speak effectively with one voice on international regulatory issues.

The time has already arrived where this lack of a single voice is adversely impacting US reinsurers. The Treasury Blueprint points out that the interaction between the US and its foreign

counterparts on issues like the European Union's Solvency II effort will likely impact not only the ability of US firms to conduct business abroad, but also the flow of capital to the US. For US reinsurers, Solvency II will set forth a process for determining which third countries are "equivalent" for purposes of doing business in the European Union. Although this issue is still being discussed, it is our understanding that the European Parliament recently obtained a legal opinion that stated that the European Commission cannot grant equivalence to a US state under Solvency II. The possibility that the entire 50-state system in the US will be deemed "equivalent" appears questionable. Thus, without Federal involvement by a knowledgeable entity tasked with responsibility for international policy issues, the US reinsurance industry will continue to be disadvantaged in these equivalence discussions.

An informed Federal voice with the authority to establish Federal policy on international issues is critical not only to US reinsurers, who do business globally and spread risk around the world, but also to foreign reinsurers, who play an important role in assuming risk in the US marketplace. The fragmented US regulatory system is an anomaly in the global insurance regulatory world. As the rest of the world continues to work towards global regulatory harmonization and international standards, the US is disadvantaged by the lack of a Federal entity with authority to make decisions for the country and to negotiate international insurance agreements. As part of its authority to establish Federal international policy, we would suggest that the Director establish a process for vetting the equivalence and recognition on a reciprocal basis of non-US regulatory regimes. This process would assist non-US reinsurers by facilitating cross-border transactions through international supervisory arrangements thereby addressing the collateral issue. We would also urge that the legislation be amended to empower the Director to negotiate and enter into these international supervisory authority arrangements.

Preemption of State Insurance Measure

The RAA also strongly supports the legislation's fourth goal, which is to provide authority for the Treasury Department to ensure that State insurance measures are consistent with Federal policy, including agreements entered into by the US with a foreign government, authority or regulatory entity. Because of the fragmented nature of the current 50-state regulatory system, it is critical that the Treasury Department be authorized to ensure that the international policy it creates, including those policies that are reflected in international agreements, are uniformly respected throughout the states by preempting any inconsistent State insurance measures. To do otherwise would perpetuate the current patchwork system of regulations and undermine the ability of the US to effectively participate in the international arena, including the ability to reach international agreements on insurance policy issues. Although we have concerns about the current preemption language in the legislation, if these issues are addressed, the preemption language could be a significant step forward in creating a more efficient and effective regulatory system in the US and enhancing the its dealings with foreign governments and regulatory entities.

I would like to focus on the RAA's two most significant concerns with the current draft of the legislation: the scope and process provisions of the preemption section.

Scope of Preempting State Insurance Measure

First, the RAA urges the Subcommittee to amend the legislation to provide the preemptive powers necessary to fully effectuate the authority given to the OII. Sections 313(c)(B) and (C) provide that the Office shall have the authority to "establish Federal policy on international matters" and to "determine in accordance with Subsection (e) whether State insurance measures are consistent with such policy, including agreements entered into by the

US" with a foreign government, authority, or regulatory entity. However, Subsection (e)(1) only allows for preemption of a State insurance measure if it is deemed to be inconsistent with agreements relating to Federal policy on international insurance matters as established by the OII or as entered into by the US with a foreign government, authority or regulatory entity. We urge this Committee to make the preemption standard in Subsection (e)(1) consistent with the broader authority conferred on the Office in Subsection (c) and allow preemption of State insurance measures that are inconsistent with any "Federal policy on international matters," not just those that are embodied in international agreements. To do otherwise leaves a gap and would allow States to have laws, regulations and policies that conflict with Federal policy so long as the Federal policy is not embodied in an international agreement.

Second, and more significantly, the RAA believes there may be serious unintended consequences resulting from the language in Subsection 313(e)(2). That Subsection provides that a State insurance measure shall be preempted "only to the extent that the measure treats a non-United States insurer domiciled in a jurisdiction that is subject to an agreement referred to in this subsection less favorably than it treats a United States insurer." A major purpose of this legislation is to allow the Federal government to establish Federal policy on international insurance matters. However, the non-discriminatory language in this Subsection takes away the Federal government's control over establishing federal policy on international issues. By providing that State insurance measures are only preempted "to the extent that the measure treats a non-United States insurer less favorably than it treats a US insurer," the bar is set for what states can do: i.e., so long as US insurers are treated the same as non-US insurers, there is no preemption. This inappropriately transfers the power to the states to decide what will be acceptable.

By way of example, collateral reduction is a controversial issue among various industry participants, including a lack of unanimity among state regulators on this issue. Certain insurance industry groups have argued that rather than have any collateral reduction for non-US reinsurers, they would prefer to also impose collateral on US licensed entities. Under the current draft of the legislation, such a state insurance measure would not be preempted so long as collateral requirements were imposed equally on both US and non-US entities. Imposing collateral on US reinsurers would be a huge step backwards and would be enormously inconsistent with the goals of regulatory reform set forth in the Treasury Blueprint and in international insurance regulatory standards.

Process for Preempting State Law

The RAA agrees that the legislation should set forth a process for determining whether a State insurance measure is inconsistent and should be preempted. However, the process set forth in Section 313(e)(3)(B) is unnecessarily extended, particularly given the fact that it does not even guarantee that preemption will occur, even after a determination by the Director that an inconsistency exists. The legislation's preemption process includes public notice of a potential inconsistency or preemption; a 30-day comment period; public notice (and direct notice to the State) of the Director's determination of an inconsistency; a reasonable period of time before the preemption becomes effective; and a final public notice that such inconsistency still exists and that preemption will occur. Even after this lengthy process is complete, a state may still seek to have the preemption stayed if the Secretary of Treasury determines that: (1) maintaining the State insurance measure is necessary for prudential reasons; or (2) preemption will result in any need to establish a supervisory or regulatory authority of the Office of the Secretary over US

insurers; or (3) preemption will result in a gap or void in financial or market conduct regulation of US insurers.

These are extremely broad standards that inappropriately allow the state to have a "second bite at the apple" to avoid preemption after a decision making process that provides ample opportunity for notice, comment and appeal. We suggest that the stay procedure provision be deleted as it is unnecessary; in the alternative, the process could provide for a stay pending any appeal. We also believe that the broad standards set forth in the stay provision are the types of factors that are more appropriately considered earlier in the process during the Director's decision-making process as to whether an inconsistent State insurance measure should be preempted.

CONCLUSION

The RAA thanks Chairman Kanjorski and the Subcommittee for this opportunity to comment on reinsurance regulation and H.R. 5840. We are hopeful that the RAA's suggested modifications will be considered prior to a mark-up of the legislation. We look forward to working with all Members of the House Financial Services Committee as the Committee considers this most important issue and this legislation moves forward.

Testimony of the
National Association of Insurance Commissioners

Before the
Subcommittee on Capital Markets, Insurance, and
Government Sponsored Enterprises
Committee on Financial Services
United States House of Representatives

Regarding:
"H.R. 5840, the Insurance Information Act of 2008"

Tuesday, June 10, 2008

Michael T. McRaith
Illinois Director of Insurance
On Behalf of the National Association of Insurance Commissioners

Testimony of Michael T. McRaith
Illinois Director of Insurance
On Behalf of the National Association of Insurance Commissioners

Chairman Kanjorski, Ranking Member Pryce, and Members of the Subcommittee, thank you for inviting me to testify before the Subcommittee on H.R. 5840, the Insurance Information Act of 2008.

My name is Michael McRaith. I am the Director of Insurance for the State of Illinois. I am testifying today on behalf of the National Association of Insurance Commissioners ("NAIC").

The NAIC has testified many times before Congress on insurance regulatory reform. In prior testimony, we recognized that certain fundamental improvements to State-based regulation may require tailored Federal assistance, State empowerment, or selective Federal partnership. We also rejected purported "reforms" that are mere veiled attempts to undermine State authority and substitute deregulation or self-regulation for effective consumer protection and fair-minded commercial oversight. Some Commissioners are opposed to the Federal government expanding its knowledge of insurance and gaining any preemptive powers. There were broad concerns about the bill as introduced. Due to our open dialogue with you, the latest discussion draft has addressed many of the concerns and has earned the conditional support of the NAIC.

H.R. 5840 – Targeted Federal Involvement

Thousands of State regulators continue to work each day with and on behalf of consumers, companies and producers. The experience and institutional expertise within State insurance departments allows for consumer and company access unmatched by any Federal agency. Indeed, while State insurance regulators have a proven record of success on solvency issues, all States, individually and collectively, continue to modernize all aspects of regulation. However, State insurance regulators acknowledge and accept the limitations upon States with respect to international matters and foreign relations imposed by Article I, Section 10 of the United States Constitution. For this reason, we appreciate the important and constructive dialogue with this Subcommittee and the bill sponsors regarding the substance of H.R. 5840.

Mr. Chairman, we appreciate and respect your assurances to consider the NAIC's comments in

the final drafting of this bill. We conditionally support H.R. 5840, subject to some important clarifications, a number of which are highlighted in this testimony. Furthermore, our conditional support also hinges on the proposal not changing in ways detrimental to insurance consumers as it winds its way through the legislative process. We appreciate the opportunity you have provided for input and the willingness you have shown to address the concerns raised by the NAIC. We look forward to continuing our constructive and substantive discussions to produce a measure that will garner our full support.

H.R. 5840 – Enhancing Competitiveness

State insurance regulators support the narrow objectives of (1) allowing a Federal agency to work with State insurance regulators to receive and analyze industry data, and (2) establishing a central contact point in the Federal government for foreign governments regarding international insurance matters. However, to be clear, support for these objectives does not include support for even nominal preemption of the fundamental prudential standards of the States by the Office of Insurance Information ("OII"). For example, insurance regulators oppose the notion that the OII can enter into an "agreement" with a foreign government and then, through the terms of that agreement, impose upon all States an industry practice or standard that threatens essential consumer protections. For that reason, the term "agreements" in Section 313(e) of the proposed bill should be more tightly defined. Clarification may also be needed to identify exactly which entities have authority to negotiate such international agreements. States' concern about federally negotiated "agreements" is not protectionist in any sense. Rather, State regulators believe that the relative merits of a regulatory practice in another country, or the international commercial needs of an industry participant, should not supersede – or be allowed to supersede – market or solvency protections the States have deemed essential. In this regard, the NAIC has worked closely with the United States Trade Representative over the years in the trade negotiation process with respect to the insurance sector of to ensure that such protections are not displaced via U.S. trade agreements.

Regarding the ability of the Secretary of the Treasury to grant a stay on proposed preemption, the NAIC suggests that the language should read "shall stay preemption" instead of the current language which reads "may stay preemption."

From our reading of the bill, we also recommend clarification to ensure that, in addition to the

processes described in the bill, the Administrative Procedures Act will apply.

The NAIC appreciates the references in the bill regarding the intent of the OII not to regulate insurers, but clarification is needed to emphasize that this intent includes the entire "business of insurance," including, but not limited to, insurers, reinsurers and insurance producers.

H.R. 5840 – Increasing Insurance Knowledge at the Federal Level

State insurance regulators fully support the goal of H.R. 5840, namely, increasing knowledge of insurance at the Federal level. We believe that institutional knowledge of insurance issues at the Federal level is fitting in this age of global competition and global challenges. This Federal knowledge of course, should be partnered with the State insurance regulatory system and institutional knowledge that has existed and operated effectively for over 137 years.

The NAIC maintains a vast compendium of financial and subject matter information on all facets of insurance. The collection and interpretation of that information, and its continual development and refinement over the years, has been of immense benefit to State insurance regulators and consumers; it has shaped market trends, strengthened consumer protections, and aided regulators and lawmakers when making public policy decisions.

The NAIC's comprehensive collection of insurance information is the largest in the world. We have also invested heavily in software tools to analyze and enhance the data. For a Federal agency to attempt to recreate this vast archive would be an unnecessary taxpayer expense and a redundant effort. If the Federal government needs access to insurance financial information, the States, individually or collectively through the NAIC, can supply the data. We appreciate your recognition of the quality of our extensive data resources in the discussion draft.

Enhancing State Regulation

While State insurance regulators wholeheartedly support and actively engage in efforts to help U.S. insurers compete globally, we oppose and caution against any legislation with a broadly preemptive approach. Given the assurances that your staff and you have given that State regulators' experience and expertise will be considered fully as this proposal moves forward, we remain confident that the final markup will continue to allow State insurance regulators to ensure

solvency and consumer protections while fostering the most competitive insurance industry. While the hint of broad preemption of State insurance regulation will result in unqualified opposition to the proposal, regulators do recognize the merits of the narrow purpose of the current proposal.

State insurance regulation has consistently outperformed its Federal counterparts in the banking and securities sectors in terms of protecting consumers and maintaining solvency. Insurance consumers have access to local protections that ensure companies pay claims as promised. Companies and producers in every State have access to local regulators to address the idiosyncrasies of individual company or producer needs or concerns.

Recognizing the limits imposed by Article I, Section 10 of the U.S. Constitution with respect to international matters and foreign relations, and acknowledging the need for a global contact point for the U.S. insurance industry, State insurance regulators accept that insurance is an integral part of the existing trade apparatus to help U.S. insurance companies access foreign markets. That apparatus must also be used, when necessary, to avoid creating artificial incentives for U.S. insurers to go offshore and evade more rigorous U.S. regulatory scrutiny.

State insurance regulators accept the objective of H.R. 5840. We accept the notion of a Federal office narrowly crafted to increase insurance knowledge in the Federal government which, in turn, can enhance the international competitiveness of U.S. insurers. As such, H.R. 5840 would create the OII to serve as a representative to the Trade Promotion Coordinating Committee (TPCC) regarding the export and promotion of U.S. insurance products and services.

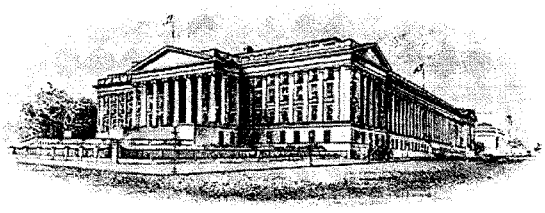
Given the limited objective of the legislation and the absence of explicit or unilateral Federal preemption, State insurance regulators will continue to work to improve the proposal. To be clear though, State regulators would object to the OII or any other Federal entity having the authority to preempt consumer protections and solvency standards adopted by States.

Conclusion

Mr. Chairman, Congresswoman Pryce and Members of the Subcommittee, State insurance regulators have been engaged in the protection of consumers and companies since 1851. Insurance regulation is constantly reviewed, analyzed and updated to reflect the evolution of the

local, State, national and international economies. To this end, we know well that changing circumstances require openness and good faith dialogue. In concept, H.R. 5840 is a good bill that, with necessary refinements, can be improved to receive the support of State insurance regulators, all of whom are solely focused on consumer protections and fostering a competitive insurance marketplace.

Thank you for the opportunity to testify. I am happy to answer your questions.



U.S. TREASURY DEPARTMENT OFFICE OF PUBLIC AFFAIRS

EMBARGOED UNTIL 10 a.m. (EDT), June 10, 2008
CONTACT Jennifer Zuccarelli, (202) 622-8657

TESTIMONY OF DEPUTY ASSISTANT SECRETARY JEREMIAH O. NORTON BEFORE THE U.S. HOUSE SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE AND GOVERNMENT SPONSORED ENTERPRISES

WASHINGTON- Thank you, Chairman Kanjorski, Ranking Member Pryce, and Members of the Subcommittee for inviting me to appear before you today to discuss the *Insurance Information Act of 2008* (H.R. 5840; Discussion Draft as of June 4, 2008).

The Need for Insurance Regulatory Modernization and Treasury's Blueprint Recommendations

Insurance performs an essential function in our domestic and global economies by providing a mechanism for businesses and individuals to safeguard their assets from a wide variety of risks. Insurance is similar to other financial services in that its cost, safety, and ability to innovate and compete is heavily affected by the substance and structure of its system of regulation.

Unlike banks and other financial institutions that are regulated primarily at the federal level or on a dual federal/state basis, insurance companies in the United States are regulated almost entirely by the States. Over time, the business of providing insurance has developed a more national focus, and the insurance marketplace has become global in nature. The state-based regulatory structure inherently makes the process of developing national products cumbersome and competing in the global marketplace more costly.

On March 31, the Treasury Department ("Treasury") released a report on financial services regulation entitled *Blueprint for a Modernized Financial Regulatory Structure* ("Blueprint"). In addition to making recommendations for a long-term "optimal" regulatory structure, the Blueprint also presents a series of "short-term" and "intermediate-term" recommendations that could, in Treasury's view, improve and reform the U.S. financial services regulatory structure – including the current state-based regulation of insurance.

In the intermediate-term, Treasury recommends the establishment of an optional federal charter (OFC) for insurance. The establishment of an OFC structure would provide insurance market participants with the choice of being regulated at the national level or of continuing to be regulated by a State. A properly constructed OFC insurance regulatory structure should: enhance competition among insurers in national and international markets; increase efficiency; promote more rapid technological change; encourage product innovation; reduce regulatory costs; and provide strong consumer protection.

There currently are pending bills in both the House (H.R. 3200) and Senate (S. 40) entitled "The National Insurance Act of 2007" that would create an OFC and establish a regulator within Treasury.

These bills contain many of the core concepts surrounding the establishment of an OFC structure as envisioned in the Blueprint. We look forward to evaluating further the specific provisions of these bills as they move forward.

While an OFC offers the best opportunity to develop a modern and comprehensive system of insurance regulation, Treasury acknowledges that the OFC debate in the Congress is ongoing. At the same time, however, Treasury believes that some aspects of the insurance regulatory regime require immediate attention. In particular, Treasury recommends that the Congress establish an Office of Insurance Oversight within Treasury. This newly established office would be able to focus immediately on key areas of federal interest in the insurance sector, including international insurance issues.

International Insurance Issues

The insurance marketplace operates globally with many significant foreign participants. There is increasing tension among current regulatory systems due to an absence of a clear and settled means for governments to recognize the equivalency of prudential regulation of insurance and reinsurance companies seeking to provide services in other countries. This impairs the ability of U.S.-based firms to compete abroad and the allowance of greater participation of foreign firms in U.S. markets.

In particular, foreign government officials have continued to raise issues associated with the United States having at least 50 different insurance regulators, which makes coordination on international insurance issues difficult for foreign regulators and companies. The National Association of Insurance Commissioners (NAIC) has attempted to fill this void by working closely with international regulators in various areas. The NAIC itself is not a regulator but facilitates communications among the States on many issues, including international insurance regulation. Nevertheless, it is becoming increasingly difficult for the United States to speak consistently and effectively with one voice.

It has become clear to Treasury that there is an immediate need to establish an insurance-sector advisor at the federal level, as well as to create a federal framework to address emerging international insurance regulatory issues. Two examples of such a need include: (1) reinsurance collateral and the perceived unequal treatment of certain foreign reinsurers; and (2) the European Union's (EU) Solvency II directive and how that may impact the competitive position of U.S. firms in Europe.

Reinsurance Collateral

States indirectly regulate unlicensed, non-U.S. reinsurers by setting out the circumstances under which U.S. licensed insurers may take financial statement credit for the reinsurance. Based primarily on the NAIC's model law and regulation, States generally require that unlicensed, non-U.S. reinsurers provide 100 percent collateral to secure their U.S. obligations. By contrast, within the EU, the European Commission through its Reinsurance Directive is eliminating collateral requirements among its EU reinsurers, but not necessarily among non-EU reinsurers.

Non-U.S. reinsurers, foreign government officials, and EU representatives believe such cross-border collateral requirements should be reduced or eliminated between jurisdictions of equivalent regulatory reinsurance supervision. Many believe that there is a strong rationale for this view, and in response, various state insurance commissioners have launched a series of efforts to address the issue and find a pragmatic solution, only to see each of these efforts founder.

Solvency II

Last year, the EU published its Solvency II Framework Directive, which seeks to develop a single EU-wide market in insurance services, create a consolidated oversight structure with strong home country lead supervision of both prudential and regulatory capital authority, and secure a high degree of

consumer protection. Solvency II is expected to be adopted by the end of 2008, and EU Member States are expected to implement the directive by 2012. The framework creates a risk-based system for assessing regulatory capital for all insurers and reinsurers on a consolidated basis across all EU Member States, similar in concept to the Basel II framework applicable to banks.

As the EU continues to move toward the implementation of this oversight framework in the insurance sector, it is becoming more apparent that the framework potentially will be at odds with the U.S. regulatory structure for insurance. In particular, it is unlikely that the EU would find the current U.S. state-based regulatory structure "equivalent" for purposes of allowing U.S. insurers to operate within the EU, meaning that U.S. companies operating in Europe would face unspecified regulatory measures that would increase the costs of their operations and place them at a competitive disadvantage.

These issues – reinsurance collateral and Solvency II – have been under discussion for many years between U.S. and European authorities through numerous channels. Despite good and cooperative efforts by all parties, we are seemingly no closer today to finding pragmatic solutions than we were several years ago.

Office of Insurance Oversight within Treasury

As called for by the Blueprint, the Office of Insurance Oversight (Office) would focus immediately on key areas of federal interest in the insurance sector by serving as an advisor to the Secretary of the Treasury on major domestic and international insurance regulatory issues. The Office would also be provided with authority to address international regulatory issues.

Such an office would be able to focus immediately on key areas of federal interest in the insurance sector without the need to create a federal regulatory structure. It would advise the Secretary of the Treasury on major domestic and international policy issues, provide true national regulatory expertise and guidance on the insurance industry and how it relates to the overall economy, and provide such expertise and guidance on legislative issues pending before the Congress.

The Office should be empowered to address international regulatory issues with foreign regulators, a role that is not being played in the non-consolidated state-based regulatory system. In this role, the Office should be the lead in working with the NAIC and state insurance regulators, who would still be primarily responsible for implementing insurance regulatory policies.

For example, the Office could lead the discussions with international regulators on international regulatory issues to develop regulatory agreements that provide for recognition of substantially equivalent prudential measures and regulatory systems with respect to insurance and reinsurance services. This would include recognition agreements providing for reliance upon facets of relevant foreign regulatory systems. Overall, the establishment of federal involvement in these types of agreements would allow for the United States to engage more consistently in dialogue with foreign regulators and enhance the prospects for resolving issues.

The role that the Office would play in U.S. negotiations with foreign governments, authorities, or regulators would be to bring its insurance expertise to the table along with a well-developed uniform U.S. position on insurance regulatory policy. Its focus would be on regulatory matters that are not presently addressed at the federal level. It would not supplant the Commerce Department or other relevant Executive Branch agencies, but would work closely with them. The United States Trade Representative would remain the chief representative of the United States for international trade negotiations, including all negotiations on any matter considered under the auspices of the World Trade Organization and commodity and direct investment negotiations.

As we suggested in the Blueprint, some degree of preemptive authority will be necessary if international regulatory agreements are going to be effective. A number of approaches to preemption could be considered, but a key aspect of establishing the Office is to improve the ability of the United States to deal more effectively with international insurance regulatory issues. Whatever the degree of preemption, the establishment of this Office should further that goal.

Treasury welcomes the introduction of H.R. 5840, the *Insurance Information Act of 2008*, by Subcommittee Chairman Kanjorski and Ranking Member Pryce. This bill would create an office within Treasury very similar to that recommended in the Blueprint.

Overall, Treasury supports the bill's creation of the Office of Insurance Information. Treasury has some concerns, however, we are confident that we can continue to work together to address these as this legislation moves forward.

Conclusion

We appreciate the efforts of the Chairman and Members of the Subcommittee. We look forward to continuing to work with you and the Congress on this important legislation. Thank you.

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STATEMENT OF

THE AMERICAN COUNCIL OF LIFE INSURERS

BEFORE THE

SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE AND GOVERNMENT SPONSORED ENTERPRISES OF THE COMMITTEE ON FINANCIAL SERVICES OF THE UNITED STATES HOUSE OF REPRESENTATIVES

ON

H.R. 5840, THE INSURANCE INFORMATION ACT OF 2008

June 10, 2008

Statement Made by

Stephen E. Rahn
Vice President & Associate General Counsel
Lincoln Financial Group

Mr. Chairman and members of the Subcommittee, my name is Steve Rahn. I am Vice President and Associate General Counsel of Lincoln Financial Group. I am appearing today on behalf of the American Council of Life Insurers, the principal trade association for U.S. life insurance companies. The ACLI's 353 member companies account for approximately 93% of the industry's total assets, 93% of the industry's domestic life insurance premiums and 94% of its domestic annuity considerations. I also serve as chairman of the ACLI's Regulation Modernization Committee, which reviews legislative proposals on insurance regulatory modernization and formulates policy recommendations on these matters for consideration by the ACLI board of directors.

I appreciate the opportunity to appear before you today to share our views on H.R. 5840, the Insurance Information Act of 2008. The ACLI applauds your efforts as well as those of the bill's cosponsors, Representatives Bean, Royce, Moore and Pryce, to explore ways in which insurance regulation can be modernized and made to operate more effectively both domestically and globally. Our testimony today will touch on both the bill as introduced and on the recently released H.R. 5840 discussion draft which proposes significant changes to the bill.

As we have testified on other occasions before this Subcommittee, more and more issues of significant importance to our business are being debated and decided by Congress. And all too often Congress does not have an effective means of gaining access to critical information on the industry as a whole or of getting policy advice on domestic and international issues that reflects a national rather than a more parochial or single-state perspective. Additionally, domestic operational issues have more recently been overshadowed by a number of international insurance concerns that highlight the difficulty of dealing effectively with global policy and regulatory matters exclusively through a state-based regulatory system. Having explicit authority vested in the federal government to establish U.S. policy on

international insurance matters coupled with the ability to enter into agreements with foreign governments or authorities to implement that policy is vital to maintaining the competitive wellbeing of the life insurance business. And with initiatives such as Solvency II looming on the horizon, these international considerations will only grow in importance.

For these reasons, we welcome and support the concept of creating an Office of Insurance Information (OII) within the Department of the Treasury. We believe such an office would be enormously beneficial to Congress as it considers issues that are vitally important to our business; would facilitate the handling of international insurance matters; and would provide a means for effectively involving the insurance industry as national policy decisions are made affecting U.S. financial institutions.

As the ACLI reviewed the introduced version of H.R. 5840, we looked very closely at the provisions relating to the preemption of state laws that are determined to be inconsistent with agreements entered into by the OII on international insurance policy matters. We believe preemption is appropriate in the context of this bill, but we also believe the preemption language must be carefully crafted in order to avoid consequences that neither the industry nor Congress intend. Toward this end, the ACLI formulated a set of principles that we believe provide prudent guidance in this area. Each principle is discussed below in the context of this legislation.

First, we agree with the approach of H.R. 5840 to limit preemption to international issues where federal policy is reflected in an agreement between the OII and a foreign jurisdiction or authority. As we read the discussion draft, the language appears more general regarding what these issues might be, and we support this

change. The nature of which international issues are at the forefront of importance to Congress or an administration is likely to change from time to time.

Second, we agree with the bill's stated intent not to create any supervisory or regulatory authority in the OII or Treasury over any U.S. insurer. We understand this legislation is not designed to establish a partial substitute for an optional federal charter (OFC) or to bifurcate insurance regulation and thus subject insurers to dual, simultaneous state and federal regulatory oversight. The ACLI continues to have as its primary regulatory modernization goal the establishment of an OFC, and we believe that any day-to-day federal insurance regulatory functions must be addressed exclusively and comprehensively through a mechanism such as the OFC.

Third, we would not want to see preemption employed in a way that leads to a real or potential "solvency gap." We believe there may be circumstances under which the OII can appropriately use preemption to advance sound international insurance policies without giving rise to such a gap, and we further believe that the administrative due process provisions added in the discussion draft help assure that preemption is used only in appropriate circumstances.

Fourth, we would not want to see preemption result in any material, unfair discrimination against any U.S. insurer. That said, we do not believe use of preemption should be withheld if it can be used to realize the benefits of regulatory efficiency provided by the regulatory regimes of foreign governments or authorities that are recognized under mutual or unilateral recognition agreements as provided by the bill. Our assessment of the "less favorable treatment" standard for preemption as used in the discussion draft is still under way. One concern we have in this area is that preemption of state insurance measures can take place only in order to assure that a non-U.S. insurer does not

receive less favorable treatment than a U.S. insurer. We would certainly not want to see a circumstance arise where preemption results in the collateral consequence of treating a U.S. insurer less favorably than a foreign insurer – with no ability to employ preemption to remedy the situation. In the same vein, we think a fundamental purpose of the OII should be to maintain the global competitiveness of the U.S. insurance industry, and we suggest the charge of the office be modified to include such a reference.

And fifth, we agree with the direction the discussion draft seems to be moving by requiring the OII to consult with the Advisory Group before entering into any international agreements with foreign jurisdictions or authorities or before making any determination that a state measure is inconsistent with such agreement and therefore preempted. We do not believe the Advisory Group should have veto power over the use of preemption or, for that matter, over the adoption of policy positions on domestic or international issues (and we do not read the discussion draft as doing so), but we agree that consulting with this group on key decisions made by the OII is appropriate.

While our analysis is still under way, we do have several additional comments and observations on the discussion draft of H.R. 5840.

- We understand that with respect to the collection of data, the intent of the discussion draft is to avoid having the OII make data calls directly on insurance companies. We support this approach. However, we do have concerns with the expansion of this authority in the discussion draft to include the collection by the OII of non-publicly available information. Although we are still analyzing all of the possible ramifications resulting from this change, our immediate reaction is two-fold. First, even though the discussion draft contains language that appears intended to ensure the

confidentiality of this information, we are not convinced that as drafted those provisions achieve that goal. For example, it is not clear exactly which existing federal law would be relied upon by the OII in claiming that information it held was confidential and could not be released in accordance with a Freedom of Information Act or other legal request for release. Second, we are unclear as to the reason it would be necessary for the OII to collect such information. Since the OII is not a regulatory body, what is the purpose of having it collect and analyze data that clearly falls within the parameters of regulatory oversight of the industry? For these reasons, we strongly believe that the collection of data and other information by the OII should be strictly limited to material that is publicly available.

- We are very concerned with the elevated level of prominence the discussion draft gives to the National Association of Insurance Commissioners (NAIC) in its relationship with the OII. We believe strongly that the OII must be an independent federal policy voice on insurance industry matters. In order for the OII Director to effectively "...advise the Secretary on major domestic and international policy issues.." and be able "...to coordinate Federal efforts and establish Federal policy on international insurance matters...", such independence is critical. Indeed, that very independence is at the heart of our support for the concept of an OII. Provisions of the discussion draft, particularly those dealing with data gathering and analysis as well as with the OII's biennial report to Congress, directly undercut and diminish this independence in ways we find troublesome. In fact, these provisions in the discussion draft suggest that the NAIC will be the OII's constant federal policy development partner. Discourse between the OII and the NAIC is certainly appropriate, and H.R. 5840 already assures that the opinions, positions and perspective of the NAIC will be heard regularly

by the OII, since it requires NAIC representatives be included as members to the Advisory Group. But any additional interaction between the OII and the NAIC should be at the OII's discretion as a federal authority and policymaker. We therefore strongly recommend that these provisions not be included into the next version of HR 5840.

- We strongly object to the addition of the Federal Trade Commission as a member of the Advisory Group. In the 1980 amendments to the Federal Trade Commission Act, the agency was stripped of any investigatory jurisdiction over "the business of insurance." Additionally, the agency's authority to conduct studies or prepare reports relating to the business of insurance was eliminated except to the extent a specific request was requested by a designated House or Senate committee. In sum, the FTC has not been involved in life insurance matters for the past 28 years, and consequently we believe it would be both inappropriate and nonproductive for the agency to be part of the Advisory Group.

Mr. Chairman, we understand and fully appreciate your intent that the OII not be construed as a substitute for, or a step in the direction of, an optional federal charter. As our comments above indicate, we see significant value in the establishment and role of the OII in and of itself and support the concept of such an office for that reason. Our primary goal with respect to modernizing the insurance regulatory system remains, however, the enactment of an OFC for insurance, and consequently we have evaluated H.R. 5840 in that light. We believe H.R. 5840 is not inconsistent with our OFC efforts, particularly since by its terms it will not afford the OII any regulatory role over domestic insurers. We do want to make clear, however, that our support for H.R. 5840 in no way diminishes our belief that an insurance OFC is vitally necessary for the life

insurance business or our commitment to work with Congress to make that objective a reality.

In conclusion, Mr. Chairman, our comments on the revised discussion draft of H.R. 5840 reflect a preliminary analysis of the various provisions in that draft. In the days ahead our analysis will continue, and we look forward to working with you and members of the Subcommittee as this legislation moves forward. Again, we thank you for your leadership role in addressing insurance issues and for advancing H.R. 5840 in this Subcommittee.

Testimony of David A. Sampson
President & Chief Executive Officer
For the Property Casualty Insurers Association of America
Before the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises
United States House of Representatives
Tuesday, June 10, 2008

Chairman Kanjorski and Members of the Subcommittee, thank you for this opportunity to appear before you today regarding the Insurance Information Act of 2008.

I want to thank the Subcommittee, especially Chairman Kanjorski, for your leadership in increasing congressional knowledge about our complex industry and facilitating global commerce in the 21st century. We appreciate your efforts to foster rigorous dialogues, like today's hearing, which advance the debate on how best to modernize insurance regulation to meet the needs of consumers and drive a competitive economy.

PCI is a trade association with a diverse membership of more than 1,000 members. Our members are writers of nearly every kind, from the multi-line, multi-billion-dollar premium giants to the small, specialty insurers. Our industry strength is rooted in our diversity and our ability to come together to create solutions for consumers. The vast range of our membership places PCI in an excellent position to provide advice and expertise on insurance regulation to Congress and the Administration.

The PCI Board has not yet taken a position on the formation of an Office of Insurance Information (OII). While we are willing to look at the need for such an office, our members have a number of fundamental questions concerning the proposal. Some members see the

potential value, yet many have concerns. Today, I will discuss concerns about adding additional layers of bureaucracy through the creation of an Office of Insurance Information, procedures and protection for data collection, the NAIC serving in the main role of information provider and the power of preemption for the OII. First though, I would like to highlight for the Subcommittee the important contributions of our industry and the principles of insurance regulation which best serve consumers and foster a prosperous economy.

Insurance is a foundation industry to the global economy. Property and casualty insurance is part of the DNA of market economies. It is the oxygen for the engine of commerce. No business or personal risk is undertaken without it. In addition to being part of the foundation that enables an economy to function, property casualty insurers make a significant contribution to every state's economy. Our industry is a major investor in municipal bonds which plays a very important role in supporting state and local economies. These investments fund projects such as the construction of schools, roads, hospitals and libraries, and support a variety of other public sector projects. Municipal bonds held by property-casualty insurance companies totaled more than $335 billion in 2006, making the industry the fourth largest type of investor in state and local municipal bonds in the United States. According to the Department of Commerce's Bureau of Economic Analysis, in 2004 there were 631,900 people directly employed by the property and casualty industry with another 1,987,578 indirectly employed by our industry.

The insurance industry positively impacts the free market system on which our nation's economy is built. That's why we advocate for market freedoms and a business environment that is characterized by healthy competition. We realize that as our global economy evolves, so must

our regulatory system for the entire financial services sector to ensure our competitiveness and continued success. PCI supports responsible reforms to the existing insurance regulatory system based on sound principles of regulation and preserving the prerogatives of the states. Markets differ greatly across America, and state-based regulation provides the flexibility that these differences require. But where the states continue to fail to make needed improvements, we may consider other approaches if proven necessary to the creation of a fair, effective and efficient business environment.

As policymakers consider options for fostering a competitive, global insurance industry and ensuring appropriate education and representation at the federal level, it is vital to understand the principles of good insurance regulation. Actions should not be taken that would ignore such principles. The primary responsibility of regulation should be to enhance solvency protection for policyholders. The best regulator of product and price is a competitive market. Such a system promotes competition and innovation in the marketplace; provides incentives for the efficient allocation of resources by consumers and insurers; attracts sufficient capital to meet public demands for insurance products and services; and promotes availability of insurer products to respond promptly to marketplace demands. Regulation should foster education to support consumer choice in a competitive market and should protect consumers against fraud and deceptive practices. Regulation should also enhance private sector function by eliminating unnecessary governmental intervention. And it should minimize economic cost of regulation by using rigorous cost/benefit analysis. Regulatory standards should be consistently applied and be easily ascertainable.

Recognizing the challenging environment in the financial services market, it is important that we resist the temptation to over correct and increase the regulatory burden on the insurance sector which has not experienced the liquidity problems other parts of the financial services sector have experienced.

Regarding the creation of an Office of Insurance Information, we are concerned about forming additional layers of bureaucracy to obtain extensive information that is already available from state agencies and industry experts and can easily be provided to Congress and the Administration. Instead of creating duplicative work and expenditures at the federal level, opportunities to access existing resources and strengthen public-private partnerships for information gathering should be considered. Such a targeted approach is consistent with our principles of good insurance regulation. An example of this type of successful collaboration is the Terrorism Risk Insurance Extension Act of 2007 reauthorization. Through collaboration with state agencies, insurance companies, and industry experts, data, education, and information was shared in a timely and productive manner. While there may be a need for a stronger voice for the industry on international issues, we believe this approach should be carefully explored.

To address concerns about protection and procedures for data collection, the current legislation needs additional clarity on the intent of use and reporting to ensure appropriate use, non-duplication of work, and unnecessary expenditures, which if occur, negatively impact consumers. In addition, capturing or reporting data could compromise the proprietary nature of the data or threaten the privacy interests of insurers, their customers or claimants. Further details are needed for the type of potential inquiries and the uses of data, as data should be targeted to

the purpose for which it is sought. There should also be a realization that data reporting requirements upon segments of the industry which are intended to provide alternative markets, such as surplus lines and risk retention groups, are counterproductive to the marketplace.

While we appreciate the work of the NAIC as a trade association, and value the contributions of Insurance Commissioners, we have concerns about an association becoming effectively the "sole source" to the OII. If the intent of the OII is to "receive, analyze, collect, and disseminate data and information and issue reports regarding all lines of insurance except health" we need to ensure the objectivity, confidentiality, certainty of privilege, and credibility of the data as well as protection of privacy. Unlike the NAIC, a new information office, if formed, would have to start with a clean slate to ensure an objective, fair role in the federal government and to provide assurance to the industry related to privacy and privilege protection. In addition, this potential new office should not be created to simply amass data. The state variation alone would make this charge unrealistic. In addition, the state agencies already compel statistical data collection and reporting and receive well defined statistical reports as a result. While striving to modernize the industry, we need to avoid adding additional bureaucracy.

As we envision the potential reality of the creation of an OII and the possible benefits, we must also carefully assess the potential issues and problems that could arise. Efforts should be made to ensure that appropriate data is collected and protected without placing burdensome, costly, and unnecessary requests on insurers which ultimately drives up costs for consumers. Data should be readily available, probative, and produce meaningful results. Additional protocols should be included to ensure privacy safeguards and discussion should continue on provisions

related to publicly available data. Ill conceived data searches are costly to taxpayers and companies, and these costs eventually trickle down to negatively impact consumers. Parameters should be identified around data collection searches to help ensure beneficial and productive results.

Furthermore, it is important that policy makers recognize that data drives a competitive marketplace. Proprietary information fosters healthy competition which in turn benefits consumers and our economy.

There are concerns with respect to the provisions for preemption of state law. This bill would, for the first time, give this potential federal entity preemptive authority over state insurance laws as an administrative process, rather than as a legislative one. This creates an uncertainty in an industry that relies on relative statistical certainty for its very existence. Without further definition, this authority could lead to unforeseen consequences which could negatively impact the industry. Thus, each preemption should be well defined by legislation and well understood, not left to develop by an administrative process. As our principles of good insurance regulation state, regulatory standards should be consistently applied and easily ascertainable. The legislative process is the most appropriate way of answering questions such as what happens to existing structures like the McCarran Ferguson Act. Additionally, the current proposal ties preemption to a country with an insurance-related trade agreement. A state law could be preempted as related to one foreign country but not another since we do not have treaties with every country. Thus, preemption may not apply equally in all states or to all policyholders.

We appreciate the leadership of Chairman Kanjorski and the Subcommittee and we look forward to working with you on these issues. Your efforts will help ensure we best serve consumers and foster a strong, competitive global economy. As we continue this important debate we need to address the questions and uncertainties the companies who provide vital insurance products have identified. The answers to these questions will ultimately determine our Board's position.

Thank you for the opportunity to appear here today.

STATEMENT OF

THE AMERICAN INSURANCE ASSOCIATION

BEFORE THE

SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE AND GOVERNMENT SPONSORED ENTERPRISES OF THE COMMITTEE ON FINANCIAL SERVICES OF THE UNITED STATES HOUSE OF REPRESENTATIVES

ON

H.R. 5840, THE INSURANCE INFORMATION ACT OF 2008

Neal S. Wolin
President and Chief Operating Officer, Property and Casualty Operations
The Hartford Financial Services Group

Good morning. My name is Neal Wolin. I am the President and Chief Operating Officer for Property and Casualty Operations of The Hartford Financial Services Group. I appear today on behalf of the American Insurance Association (AIA). AIA represents more than 350 property - casualty insurers that write more than $123 billion in annual premiums across the country.

Before turning to the legislation that is the subject of this hearing, I would like to thank Chairman Kanjorski, Ranking Member Pryce, and the members of this Subcommittee for your ongoing commitment to insurance regulatory modernization. The recent Treasury "Blueprint for A Modernized Financial Regulatory Structure" underscored what Members of this Subcommittee have long understood —insurance plays a critical role in today's increasingly interconnected and global financial markets. Unfortunately for America's consumers and investors, the lack of uniformity in insurance laws and regulation and the misguided emphasis on government price controls and regulatory micromanagement of insurance products hinder innovation, generate serious cost and efficiency burdens, and hamper the industry's global competitiveness. The insurance consumer loses in the current system because of the slower pace of innovation and the growing size of subsidized state "markets of last resort" in states that have tight government rate regulation.

Today I testify in support of the Insurance Information Act of 2008 (H.R. 5840), which would establish a federal Office of Insurance Information within the Department of the Treasury. It would thereby create an insurance expert who serves as the principal federal advisor on domestic and international policy issues for all lines of insurance but health. In one stroke, we would answer the call for a single national voice on these important matters.

Equally important, the bill would give the federal government the authority it needs to engage with its counterparts around the globe on international insurance matters, with targeted authority to back up any formal commitments made by the United States.

As you know, AIA strongly advocates the creation of an optional federal charter (OFC) for insurers. We believe that an OFC, as set forth in the National Insurance Act of 2007 (H.R. 3200) represents the best opportunity to advance regulatory modernization in a manner that works for consumers, the industry, our shareholders and the economy. At the same time, we recognize that H.R. 5840 would fill a critical immediate void that is hampering the development of sound public policy on international insurance issues that often arise in discussions between the United States and foreign governments. We support H.R. 5840 because it will provide an essential single, federal source of analysis and policy guidance on these issues.

Overview of the Legislation

As I have indicated, H.R. 5840 would create a federal Office of Insurance Information (OII or Office) within the Department of the Treasury to build national insurance expertise and to establish consistent U.S. insurance policy with respect to international regulatory best practices, as well as the insurance component of trade agreements.

To accomplish these objectives, the bill would vest the OII with the authority to collect and analyze data on insurance risk and insurance markets; advise the President, the Secretary of the Treasury and the Congress on major domestic and international policy issues regarding property-casualty and life insurance; establish federal policy on international insurance matters; and determine whether state insurance laws are consistent with agreements relating to federal policy on international insurance matters, as entered into by the U.S. and foreign authorities.

The bill also establishes an Advisory Group, comprised of state regulators, U.S. government agencies, consumer groups, and others in the insurance industry and requires that the OII report to Congress every two years.

Need for the OII

An Office of Insurance Information is needed for both domestic and international public policy reasons. Insurance regulation, once thought to be the province of isolated industry practitioners and regulators, is now central to public policy debates over the direction of the financial services sector and the U.S. economy. It has also increasingly become a priority issue in discussions between the U.S. government and foreign nations. At the last hearing of this Subcommittee, Chairman Kanjorski said that almost 90 bills involving "insurance" have been introduced in this Congress and referred to the Financial Services Committee.

The past year has seen the enactment of an extension of the Terrorism Risk Insurance Act, as well as serious debate on proposals that would greatly expand federal financial responsibility for natural catastrophe insurance. These issues raise fundamental insurance questions. Yet the federal government's executive branch maintains no established insurance expertise or authority to help formulate sound national public policy on such matters.

A central source of expertise within the federal government is needed to help Congress make better decisions about national insurance policy. The ongoing problems in the bond insurance marketplace provide a good example: despite the important role of financial guaranty insurance, no federal regulator was authorized to evaluate the bond insurance market in a manner that could have

foreseen the truly national impact that industry can have on the U.S. financial system's overall health.

The OII is also needed to give a national voice to U.S. insurance interests in the global insurance marketplace. The U.S. has been hampered in its ability to negotiate the insurance component of international trade agreements. The National Association of Insurance Commissioners (NAIC) attempts to play the role of counterpart to foreign regulatory authorities or foreign governments on insurance matters. However, state regulators, whether acting unilaterally or under the NAIC umbrella, lack the Constitutional authority to make international commitments for the United States.

As a result, insurance issues have sometimes been inadequately addressed in important international agreements. For example, in the Financial Services Chapter of NAFTA, Mexico excluded all cross-border provision of insurance services. And in the WTO negotiations, very few insurance commitments have been made by emerging market countries. We have had some progress. The United States Trade Representative has recently achieved meaningful success for insurance in individual FTA negotiations. But this is becoming harder to do as negotiating partners increasingly demand reciprocal regulatory concessions that neither the states nor the federal government can deliver on behalf of fifty plus state regulators.

Moreover, foreign insurance regulatory regimes are in the midst of significant global transformational change. In Europe, the Solvency II Directive will completely alter the insurance regulatory structure in EU member nations through introduction of a total balance sheet and enterprise-wide risk management approach to solvency requirements and a supervisory review process that requires companies to perform extensive annual risk self-assessments across the complete spectrum of operational, credit, and other types of risk.

Solvency II cannot be adequately considered for integration with the U.S. state insurance regulatory structure because of inconsistencies between state-based and European standards: the states focus on the entity operating within their borders, while the developing European standards focus on the group's operation throughout all of Europe. Also, regulatory developments abroad may affect U.S.-based insurers' ability to compete in foreign markets. As noted in a recent analysis of Solvency II by Standard and Poors, "in the absence of supervisory equivalence, non-EU insurers may find themselves operating at a competitive disadvantage in Europe."

The OII could work with foreign governments, the industry, and state insurance regulators to find a solution that will ensure continued U.S. insurance company access to global markets as equal competitors. The U.S. also needs a national advocate as the new insurance standards become integrated into the

international best practices at the International Association of Insurance Supervisors (IAIS).

Accounting standards for the insurance sector are also undergoing change because of pressure to converge individual national accounting standards into a single global standard. Some have suggested that the International Financial Reporting Standards (IFRS) should be the global standard. If the U.S. is to move to a financial reporting framework that is not based on generally accepted accounting principles (GAAP), the U.S. insurance industry must have an effective voice in negotiations to adopt a new and appropriate accounting standard that would bring greater comparability and increased disclosure to the global marketplace.

Preemption and the H.R. 5840 Discussion Draft

H.R. 5840 as introduced does not alter the current role of state insurance commissioners as the regulatory authority in their respective states. In fact, the exemption language of the bill precludes the OII from establishing general supervisory or regulatory authority within the Treasury Department. However, to ensure that state insurance laws remain consistent with federal policies relating to international insurance matters reflected in agreements entered into by the U.S. with insurance regulators in other countries, the bill grants the OII the authority to preempt inconsistent state laws or regulations.

The scope of preemption in the discussion draft is further narrowed to block only those state insurance measures that treat "a non-United States insurer domiciled in a jurisdiction" subject to an international agreement "less favorably than [that jurisdiction] treats a United States insurer." We believe that the revisions in scope may decrease the ultimate utility of the preemption provisions unless clarified. To address this concern, and to provide for meaningful preemption, we would urge the Subcommittee to make the scope symmetrical so that states do not subject U.S. insurers to less favorable treatment than non-U.S. insurers doing business in those states. Preemption should be exercised to ensure that all insurers are subject to the same standards and compete on an equal basis. We would be pleased to work with the Subcommittee to find a way to include such a principle of symmetry in the draft.

The other proposed revisions to the bill's preemption language would grant the Treasury Secretary the authority to stay a preemption determination for prudential reasons or where that determination would result in a regulatory gap in either U.S. financial solvency or market conduct regulation, or establish general federal regulatory authority over insurance. These are useful benchmarks to guide the Office's decisions to preempt state insurance measures and we look forward to working with the Subcommittee to achieve a successful formula.

Information Collection & Confidentiality

As introduced, H.R. 5840 provides the OII with the authority to collect, receive and share publicly-available data and information in order to develop and issue studies on the U.S. insurance markets and to report periodically to Congress. However, the discussion draft alters this authority by removing the limitation to "publicly available" information. This change puts at risk the confidentiality of non-public data and information. Insurers are intensely focused on the need to protect proprietary information.

The vast majority of state laws – which are an outgrowth of the NAIC market conduct surveillance model – protect the confidentiality of data or information submitted as part of the market conduct analysis and examination process. This statutory protection is rational from the regulatory and industry perspectives, as it enables insurance regulators to gather unrefined information to analyze business conduct in the marketplace, and it allows insurers to provide that information without fear that it will be misused or misinterpreted in the public realm. By expanding the OII's collection function to non-public information and not providing a statutory guarantee that information will receive confidentiality treatment identical to that provided under state law, the discussion draft both erodes current state law protections and inadvertently encourages the collection and distribution of non-public information through non-governmental channels such as the NAIC – entities that do not enjoy the same statutory authority as state insurance departments to protect such information. Given these concerns, we encourage the Subcommittee to either restore the "publicly available" limitation on the OII's information collection function, or to modify the discussion draft in a way that will allow any non-public information to receive the confidentiality currently afforded by state law and that will not encourage the breach of those laws through centralized collection by a non-governmental entity. With respect to the Office's direct collection of non-public data, we would welcome the opportunity to work with the subcommittee to find a way to protect the information that the Office collects. Perhaps one solution could be found in other legislation that safeguards the confidentiality of proprietary data.

Conclusion

In conclusion, AIA supports H.R. 5840. It fills a critical void of expertise and of insurance issue advocacy nationally and internationally without changing the current state-based insurance regulatory system. We encourage you to enact this legislation, as quickly as possible, so that U.S. interests are not at a disadvantage during critical international negotiations that are now defining the future of insurance solvency standards and regulatory oversight.

At the same time, we urge that you maintain the Subcommittee's focus on broader insurance regulatory reforms that would address the increasing cost and efficiency burdens that our disjointed state insurance regulatory system imposes

on insurers, our policyholders, and our investors. In order to establish uniform, effective, and efficient regulation over all aspects of the insurance system, we staunchly support an OFC.

Thank you for the opportunity to testify today and for your continued leadership on insurance regulatory reform and other critical insurance issues. I look forward to working with the Subcommittee to improve our nation's insurance regulatory system and would be happy to answer any questions you might have.

5600 Cox Road • Glen Allen, VA 23060 • tel 804.267.8128 • fax 804.267.8827 • mailbox@AHOPC.org

June 9, 2008

Honorable Paul E. Kanjorski
Chairman
Honorable Deborah Pryce
Ranking Member
Subcommittee on Capital Markets, Insurance,
and Government Sponsored Enterprises
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Dear Chairman Kanjorski and Ranking Member Pryce:

The American Home Ownership Protection Coalition (Coalition) strongly supports the goals of H.R. 5840, "The Insurance Information Act of 2008", because it would enable the Department of Treasury to play a sensible role on behalf of the federal government regarding insurance matters that affect housing availability and home ownership across the nation. The Coalition's members have a unique perspective on this bill as a result of their dual roles as active participants in both the housing and insurance markets. H.R. 5840 would provide useful public policy information and analysis of the interaction between these two areas by having the Treasury Department: (1) collect, analyze, disseminate, and report on insurance matters that impact federal programs, (2) provide policy advice and coordinate federal efforts on insurance, (3) serve as a federal liaison to the National Association of Insurance Commissioners, and (4) interpret and enforce federal policies concerning international insurance agreements. Sound information and coordination on insurance are essential to help guide Congress and federal housing authorities as they strengthen existing programs and implement additional measures to assure that American consumers have ready access to the dream of home ownership.

The Coalition represents the nation's three largest providers of real estate settlement services and title insurance. Fidelity National Financial, The First American Corporation, and LandAmerica Financial Group collectively underwrite more than 80 percent of the $17 billion in title insurance policies sold each year in the United States. Those policies are an essential part of real estate transactions because they protect homeowners, mortgage lenders, federally-sponsored mortgage entities, and securities markets against fraud and myriad other threats that can jeopardize legal ownership of the largest equity asset held by most Americans. In addition, the Coalition's member companies provide a wide range of real estate transfer, monitoring, and support services that strengthen the mortgage lending process for everyone involved.

Recent problems in the nation's housing markets clearly demonstrate the federal government's important interest in fostering safe, fair, and reliable mortgage lending. As knowledgeable and experienced participants in the homeownership process, the Coalition and its members know that title insurance and related services increase the supply of affordable mortgages by providing the necessary assurances that home buyers, lenders, and securities markets rely upon to accept the risks inherent in real estate transactions. We believe the federal government has a responsibility to monitor and collect information that will result in policies and programs that protect individual homeowners, providers of mortgage capital, and federal taxpayers.

We look forward to being a resource for providing accurate information and helpful ideas as you move forward with legislation designed to address critical housing issues. Please feel free to contact the Coalition's Washington representatives, Jack Chesson (703-573-1123) or Holly Kinnamon (202-294-9536), if you or your staff have questions or need additional information.

Sincerely,

Erika Lorenz Alba	Timothy V. Kemp	Peter A. Kolbe
Coalition Co-Chair	Coalition Co-Chair	Coalition Co-Chair
Fidelity National Financial	The First American Corporation	LandAmerica Financial Group

Testimony before the U.S. House of Representatives

Financial Services Subcommittee On Capital Markets, Insurance and

Government Sponsored Enterprises

on the subject of "H.R. 5840, The Insurance Information Act of 2008"

Tuesday, June 10, 2008, 10 a.m..

Rayburn Office Building, Room 2128 , Washington, DC

"A Federal Insurance Information Office Is A Good Start"

Presented by:

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Chairman Kanjorski, and Distinguished Members of the House Financial Services Subcommittee On Capital Markets, Insurance and Government Sponsored Enterprises, and staff: Thank you very much for giving me the opportunity to present testimony to you today.

My name is Eric D. Gerst. I am an attorney, and have been practicing law for more than 30 years. I am a member of the Philadelphia, Pennsylvania and Washington, DC bars. I'm also a member of the American Bar Association Tort Trial and Insurance Practices Section (TIPS), and have been admitted to practice before the United States Supreme Court . A significant part of my practice, besides transportation law, has been in the area of insurance law, representing businesses and individuals in the industry, as well as those outside of it. I am presenting this statement on my own behalf, as a taxpayer and as an insurance policy holder, and not as a representative of any particular organization or association. I have recently written a book on the serious problems of the insurance industry, and how to fix them. .[1] It discusses the very items -- reform of the insurance regulatory system -- for which Congressman Kanjorski's subcommittee has been holding hearings over the past several months.

[1] The book, released in May 2008, is entitled "*Vulture Culture: Dirty Deals, Unpaid Claims, and the Coming Collapse of the Insurance Industry*", by Eric D. Gerst Esq., and has been published by AMACOM, NY, the publishing arm of the American Management Association .

Mr. Chairman, and Members of the committee: H.R. 5840, The Insurance Information Act of 2008, introduced on April 17, 2008 by Congressman Kanjorski and four other members of the House Financial Services Committee, would create a federal Office of Insurance Information within the Department of the Treasury to provide advice and expertise on insurance policy to the Administration and to Congress. The bill rightly recognizes the globalization of commerce, including insurance, as well as the need for education of not only consumers, but for education of Congress itself.

As someone who has studied the industry, I reviewed the discussion draft of the bill, and I believe it is a good first start, but it needs far more details. For example, how does the Information Secretary get the information from a reluctant insurer, association, or individual? Shouldn't the Department have a clear method of obtaining information, such as through the use of subpoena power? Or, if the Secretary concludes that there is an imminent danger, to the economy, or to consumers, what are the tools that he has to enjoin the action, or impose civil or criminal penalties? Shouldn't the Information Secretary have as a goal the receipt of information

necessary for the creation of a uniform set of insurance regulatory standards within the entire United States? Shouldn't the panel that the information Secretary appoints have as its goal to review a reform of the insurance regulatory system, and to make recommendations to the Congress and President?

The press release issued on June 3, 2008 by the House Committee On Financial Services, contained a remarkably candid statement. Subcommittee Chairman Kanjorski stated that "in order to enable the most effective and sensible legislation, we, as lawmakers, must educate ourselves on insurance policy and build a knowledge base in the federal government on these issues. An Office of Insurance Information would help initiate such sort after results". By introducing this legislation, and by making the statement that Congress needs to be educated on insurance matters, this is sure to raise the eyebrows of most US citizens.

Ask the average US citizen in the street, and most of them will be shocked to learn that the federal government has virtually no control and oversight over the insurance industry. The federal government does have control and oversight over almost every other important function of our daily

lives (Banking, Commerce , Defense, Education, Energy, Food and Drugs, Health, Homeland Security, Housing, Securities, to name just a few) -- but not Insurance .

The McCarran-Ferguson Act of 1945[2] gave the insurance industry immunity from the antitrust laws, and required each state to regulate "the business of insurance" within its borders. The federal government had to stay out it. More than a half century ago, when the Act was passed, state by state regulation may have had its purpose, since insurance was primarily local. However, the industry has become national and international, requiring it broader regulatory approach. Many state insurance regulators, well intentioned as they may be, are unable or unwilling to keep up with the trends, and certainly cannot handle the rising number of problems that have beset the industry in recent years.[3]

[2] The McCarran Ferguson Act, U.S. Code Title 15, Chapter 20, 15 U.S.C. section 1011 et seq

[3] The industry problems include : insurance executives pleading guilty to fraud and bid-rigging, massive monetary settlements with regulators, refunds by major insurers and major brokers for not acting in the best interests of their insurance customers, exposure of rogue executives, resignations of industry leaders, surprise liquidations, millions of dollars of unpaid Hurricane Katrina claims, unregulated offshore reinsurers, unorthodox claim procedures, demutualization of insurers, Internet insurance sales, international takeovers of US insurers, HMO and managed care abuses, medical malpractice premium crisis, and numerous other issues.

As a perfect example of the need for federal insurance information, we are hearing reports that foreign conglomerates from emerging economic powerhouses, such as China, are looking to take advantage of the US's current credit crunch and our economic woes, to acquire US and European insurance companies[4]. Would their interests be adverse to our interests if they took control ? Or suppose Saudi Arabia desires to acquire an US insurance company? How do we protect against predatory practices, inadequate capitalization, jurisdictional questions, increased rates, or other insurance policy changes.

Under the present set of circumstances, in which a there is no federal government approval or oversight, the approval and oversight of such a huge transaction may be left to one of our state regulators in whose state the foreign conglomerate would intend to operate. That state regulator would render an opinion to be accepted by all other states. Our citizens will now be faced with the stark realization that the federal government has no power of oversight or control over such a move.

[4] Insurance Journal online, June 3, 2008

The serious problems of the insurance industry have caused anger and concern in Congress, an erosion of trust among consumers, and embarrassment for many of the good people working in the insurance industry. If not corrected, this could cause a collapse of an important industry, one of the backbones of our economy .

To reverse the progression, restore the confidence of the consumer, and create a better industry, fair to consumer and insurer alike, the House committee has correctly identified the need for insurance regulatory reform as the most critical element . In doing so, it properly is seeking comments from not only industry, but from knowledgeable private citizens.

In the legislation being proposed, the creation of a federal information department is a first step in a reform that, upon amplification, would clearly benefit the economy, the insurance industry and consumers -- and it should have been done years ago.

I have studied the regulatory options available, and I strongly urge that we change from the 50-state system of insurance regulation under which we have been operating for more than one half a century, pursuant to the

McCarran Ferguson Act, and in its place, create a federal insurance regulator, one who operates pursuant a new law, which I have suggested be called the Uniform Federal Omnibus Insurance Law (UFOIL). My suggestions for UFOIL have been documented in other submissions to the committee and I would be happy to resubmit them if requested.

Any step toward federal information about the insurance industry, with proper guidelines, should be of benefit to everyone.

Thank you for allowing me the opportunity to present my views for the committee's consideration. I would be happy to answer any questions .

Respectfully submitted,

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STATEMENT FOR THE RECORD OF

NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

AT THE HEARING ON

"H.R. 5840, THE INSURANCE INFORMATION ACT OF 2008 "

BEFORE THE

SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE AND GOVERNMENT SPONSORED ENTERPRISES

HOUSE FINANCIAL SERVICES COMMITTEE

June 10, 2008

The National Association of Mutual Insurance Companies ("NAMIC") is pleased to offer comments to the Capital Markets, Insurance, and Government Sponsored Enterprises Subcommittee to examine legislation to create a federal insurance advisor.

Founded in 1895, NAMIC is the largest full-service national trade association serving the property-casualty insurance industry with more than 1,400 member companies in the United States. NAMIC members are small farm mutual companies, state and regional insurance companies, risk retention groups, national writers, reinsurance companies, and international insurance giants. NAMIC members are distinguishable by not only their size, but their diversity in business models and markets. Our member companies support reform of the state based insurance regulatory system to reflect a diverse and dynamic 21st century marketplace, reduce inefficiencies and redundancies, streamline product approvals and licensing and move toward open competition based pricing.

For over 135 years insurance regulatory authority has been vested within the states. In response to the United States Supreme Court decision in *United States v. South-Eastern Underwriters Association*, 322 U.S. 533 (1944), that insurance was "interstate commerce" and subject to regulation by the federal government, Congress enacted the McCarran-Ferguson Act, which provided for the continued regulation of insurance by the states

While the states retain regulatory authority and responsibility, Congress and the federal government play meaningful roles in the business of insurance, including creation of federal insurance programs such as the National Flood Insurance Program, federal insurance backstops such as the Terrorism Risk Insurance Act, and oversight, including hearings and investigations by congressional committees and the General Accountability Office.

The increasing globalization of financial markets and integration of products and services has led to calls for an enhanced role for the federal government in insurance regulation. Legislation has been introduced in this and past Congresses to create an optional federal charter and the Treasury Department recently released a blueprint for financial reform proposing the establishment of an Office of Insurance Oversight and transitioning to a federal charter over time.

Following the release of the Treasury Blueprint, Chairman Paul Kanjorski (D-PA) introduced H.R. 5840, the Insurance Information Act of 2008, to create a federal insurance advisor within the Department of Treasury. Joining Chairman Kanjorski as original cosponsors were Financial Services Committee members Deborah Pryce (R-OH), Edward Royce (R-CA), Melissa Bean (D-IL), and Dennis Moore (D-KS).

NAMIC supports a reformed state-based insurance regulatory system with an appropriate role for Congressional oversight and review. Congress could also play a limited and supporting role in achieving national uniformity and consistency through the adoption of federal standards. An Office of Insurance Information, if properly constructed and contained, could help modernize the insurance regulatory marketplace and reduce inconsistencies and redundancies, while recognizing and respecting the rightful and necessary role of state-based regulation.

H.R. 5840

The Insurance Information Act of 2008 would establish an Office of Insurance Information ("OII") within the Department of the Treasury as the principal advisor to the President and Congress on domestic and international policy matters in connection with all lines of insurance, except health insurance. The OII would have the authority to:

- receive, analyze, collect and disseminate data and issue reports;
- coordinate federal efforts and establish policy on international insurance matters;
- determine consistency of state laws and regulations with federal international insurance policy;
- advise the Secretary of Treasury on domestic and international insurance policy issues;
- serve as a liaison between the federal government and the National Association of Insurance Commissioners ("NAIC"); and
- serve as Treasury representative to the Trade Promotion Coordinating Committee.

NAMIC, a supporter of state-based insurance regulation, has a demonstrated history of support for Congress's role in insurance oversight. An example of this approach is the adoption by the House of H.R. 1065, which streamlines regulation for nonadmitted insurance and reinsurance carriers. NAMIC supported passage and likewise supports H.R. 5611, the National Association of Registered Agents and Brokers Reform Act of 2008. A well-defined, carefully delineated structure within the Department of Treasury, without regulatory or supervisory authority, could work to facilitate streamlining and modernization of the state-regulatory system and reduce redundancies and inefficiencies within the system.

As we consider the creation of a new office within the federal government dedicated to insurance related issues, we must carefully balance the benefits of the office with the burdens imposed on insurers and producers and the relationship with other entities.

Data Collection

Insurers and producers currently provide volumes of information to state regulators in the form of annual financial statements, market conduct data and other routine and special data calls. Production of this information is costly and time consuming. Attempts by the federal government through the OII to duplicate information currently produced would be redundant and would add to the time and expense already incurred. In addition, if the information requested differs, evenly slightly, from the data provided to state regulators, insurers and producers would incur additional time and expense to reformat and capture data.

The Act would authorize, but not require, the OII to collect data from the NAIC, member states or affiliates. The Act, however, does not specifically allow the OII to utilize other entities, such as registered statistical agents, to collect and remit the data. Collection of data by the NAIC has raised serious concerns for insurers. The NAIC is not a regulator and serious and unanswered questions arise in the context of the confidentiality and protection of data collected. The NAIC's ability to maintain confidentiality and enter into agreements to provide for that confidentiality is legally untested. By designating the NAIC as the primary conduit (the NAIC itself, a member or an affiliate thereof) through which data could be collected, the Act elevates the NAIC to a new quasi-regulatory role.

NAMIC believes that OII data collection could be accomplished more efficiently and with greater assurances of confidentiality and privilege protections through the use of independent third-party statistical agents. Statistical agents are licensed and regulated by the states to perform these types of data collection and remittance functions and have a long and trusted relationship as stewards of confidential industry information.

Confidentiality and Privilege of Information

The Act does not specify the exact information that could be received, collected, analyzed or disseminated by the OII. Data held by insurers which could be obtained by the OII is often confidential, private or sensitive in nature. As such, proper protections must be included that will appropriately safeguard the integrity and security of that data. Data may, for example, contain personally identifiable information, business information that could be used by competitors or company or industry information that could be used to inappropriately assert legal claims, including class action lawsuits. The broad discretion that the statute grants to the Office in identifying information to collect necessitates the most stringent controls on the dissemination and republication of that data or components thereof.

The OII should at a minimum be required to protect any information its collects, whether directly or indirectly through a third party, as privileged and confidential in the same manner that the Internal Revenue Service is required to protect the information it collects from taxpayers. As such the statute should bar OII from disseminating or otherwise producing or republishing any information that would be identifiable as received from a particular insurer or producer. In addition, the provision of information to the OII, directly or indirectly, should not constitute a waiver of any federal or state privilege or right of confidentiality held by such insurer or producer. Similarly, the statute must provide that disclosure of information by any insurer or producer to the OII, directly or indirectly, will not constitute a violation on the part of any insurer or producer of any obligation it may have to protect the privacy and confidentiality of information held with respect to any individual or entity, including without limitation obligations to protect privacy and confidentiality arising by agreement or under state or federal law, regulations or court orders.

International Insurance Policy

The Act would authorize the OII to establish federal policy on international insurance matters and to enter into agreements with foreign governments, authorities or regulatory entities. Such agreements would preempt any state law or regulation to the extent that the measure treats a non-United States insurer domiciled in the jurisdiction less favorably than it treats a domestic insurer. The changes in the Act related to the scope of the preemption and authority to establish policy is a positive step. The initial legislation raised concerns that the undefined term "international insurance matters" could be read overly broadly and be used to override underlying state policies. Limiting the preemption to provisions that treat insurers differently based on their domicile is an improvement of the legislation.

However, the Act entrusts broad authority to establish policy with the OII, in consultation with a newly created Advisory Group. NAMIC believes that Congress must exercise appropriate oversight over the activities of the OII and that policy should be subject to congressional review.

Preemption

The Act provides for the preemption of state insurance laws or regulations that are inconsistent with agreements relating to federal policy on international insurance matters to the extent that they treat non-United States insurers less favorably than United States insurers. Prior to determinations the OII would publish in the Federal Register notice of the potential inconsistency or preemption and a description of state laws or regulations at issue for public comment. In the event of a determination of preemption the decision would be

published in the Federal Register and the affected state would be notified. A reasonable period of time would be established before the preemption became effective. After the expiration of the period, if OII determines that the inconsistency still exists the Office would be required to notify the state and publish notice in the Federal Register that the state law is preempted. The Secretary of the Treasury would be permitted to stay the preemption if determined to be necessary for prudential reasons.

The inclusion of provisions for publication of determination and public comment are important additions to the Act. The addition of administrative procedures and protections are also a step in the right direction; however, they do not negate the need for judicial redress. States or parties with standing must be given the opportunity to appeal the decision of the Secretary of the Treasury and to have the preemption stayed during the pendency of the proceeding. The Act should also provide that the burden of proof to justify the preemption of state law or regulation rests with the Department and decisions related to preemption should not be given Chevron deference.

Advisory Group

The Act establishes an Advisory Group to the Office of Insurance Information ("Advisory Group"). The panel of no more than 13 members would be comprised of representatives of the NAIC, Department of Commerce, Federal Trade Commission and the Office of United States Trade Representatives, and such representatives of the insurance industry, consumer groups and other organizations the Secretary of Treasury deems appropriate. The role of the Advisory Group will be essential to the success of the OII and it is important that the members be actively involved in the work of the Office and that its membership be representative of all interests involved.

The Act provides for more than one representative of the NAIC, but does not specify the number of the 13 positions that may be filled by the NAIC. The NAIC, as a private entity, is not a regulator and therefore, NAMIC believes that legislation should provide for representatives of state regulators nominated by the NAIC, rather than representatives of the NAIC. Representatives should be regulators or their designees and should not be NAIC staff or non-regulatory persons. The number of regulator representatives should also be limited to no more than 20 percent of the Advisory Group.

Regulators implement and enforce state insurance laws enacted by state legislators. State legislators are at the forefront in the development of state insurance policy and must be represented on the Advisory Group. NAMIC strongly recommends the addition of designated representatives of state legislative government nominated by the National Conference of Insurance

Legislators (NCOIL), the National Conference of State Legislatures (NCSL) and the American Legislative Exchange Council (ALEC).

Industry representation on the Advisory Group must be guaranteed by the legislation, rather than left to the discretion of the Secretary, and should include at a minimum one representative of the property and casualty industry and one representative of the life insurance industry. The insurance industry is not a monolith and the interests of the two distinct lines of the industry are best served by separate representation. Similarly, producers should be independently represented on the Advisory Group.

National Association of Insurance Commissioners

As previously mentioned the Act through various references to the NAIC appears to elevate the organization to a new quasi-regulatory role. The NAIC, although it has expanded its services significantly in recent years, remains by its own admission a "regulatory support organization." Although the organization provides a forum for coordination among state regulators and it may recommend policy, it does not establish state insurance regulatory policy nor does it enforce those policies. While it provides legal advice to state regulators it does not make or prosecute those laws. Each state has its own insurance laws and regulatory structure.

The goal of the OII should be to serve as a liaison and coordinate with state insurance legislators and regulators. The NAIC may be a conduit through which to facilitate that coordination, but the goal itself should not be coordination with the NAIC, but with their member regulators. The bill makes several references to the NAIC, including the OII as the liaison between the federal government and the "NAIC;" representation by the "NAIC" on the Advisory Group and consultation with the "NAIC" on biennial reports. NAMIC strongly urges amendment of the legislation to reference "state regulators" rather than the "NAIC." Recognizing that the OII will interact with the NAIC, the act should encourage direct interaction with state regulators.

Likewise the Act should provide for coordination and liaison with state legislators. Language should be added to the function of the Office to provide for such coordination.

Conclusion

We appreciate the Subcommittee's commitment to insurance regulatory reform and pledge to work closely with the members to achieve meaningful and effective reforms for an open competitive 21st insurance marketplace. NAMIC remains committed to a reformed state-based insurance regulatory structure, but recognizes and supports an appropriate Congressional role in oversight. The

establishment of an Office of Insurance Information within the Department of Treasury, if accompanied by the strongest confidentiality and privilege protections, limited in scope, coordinated with the advice of a well-balanced advisory panel, with limited pre-emptive authority and overseen by Congress, could play a vital role in this modernization effort. We believe that the legislation as modified by the Chairman's discussion draft is a significant step in that direction and could effectively provide needed insurance expertise in Washington and assistance with international insurance matters. We urge the Committee to include additional changes to address concerns raised in these comments as the process moves forward.

We look forward to working with Chairman Kanjorski, Ranking Member Pryce and members of the subcommittee and full committee to achieve our shared goals of a healthy and competitive insurance marketplace.

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National Association of Insurance Commissioners (NAIC)
International Insurance Relations (G) Committee:
Action Plans

I. International Standard Setting
II. International Trade
III. Regulatory Cooperation

I. INTERNATIONAL STANDARD SETTING

IAIS (International Association of Insurance Supervisors)
The IAIS is the principal international organization of insurance supervisors, engaged in creating international standards of insurance supervision, and implementing the standards in the member jurisdictions (over 100 countries.)

IAIS Action Plan:

1. ***Priorities:*** The International Insurance Relations (G) Committee establishes internal referrals to the relevant NAIC committees; updates the IAIS priority list, and recommends policy guidance.

2. ***Representation:*** With input from the G Committee, the Officers appoint NAIC representatives to IAIS "priority" committees:
   a. Executive – Cmsr. Walter Bell (AL) [vice chair]
   b. Budget – Cmsr. Bell (AL)
   c. Technical – Cmsr. Gross (VA) [chair], Cmsr. Bell (AL), Cmsr. Goldman (NJ)
   d. Reinsurance – Cmsr. Goldman [chair]
   e. Solvency – Joe Fritsch (NY)
   f. Insurance Contracts (Accounting) – Rob Esson (NAIC) [chair], Ramon Calderon (CA)
   g. Governance & Compliance Subcommittee – Dir. McRaith (IL)
   h. Insurance Core Principles Review Task Force – Cmsr. Geeslin (TX)
   i. Insurance Groups & Cross-Sectoral Issues Subcommittee – Cmsr. McCarty (FL)
   j. Financial Stability Task Force – Cmsr. Bell (AL), Cmsr. Gross (VA)
   k. Joint Working Group on Microinsurance – Cmsr. Oxendine (GA)

3. ***Policies:***
   a. Standard Setting: The NAIC will -
      i. Promote U.S. regulatory principles, and critically review alternatives, in the development of international standards for insurance supervision;
      ii. Volunteer to participate in training seminars with international insurance experts in MOU jurisdictions.
      iii. Consult with U.S. industry and consumers in the development of policy positions.

   b. Administration: The NAIC will -
      i. Oversee the structure of annual dues consistent with NAIC interests.
      ii. Urge further coordination with OECD and FSF on role in market surveys and analysis.
      iii. Sponsor a "secondee" (state insurance department or NAIC staff) to the IAIS
         1. To improve the administration and transparency of the organization
         2. To ensure the proper representation of U.S. interests in IAIS actions.

1. **Internal referrals** of IAIS committees to related NAIC committees:
    a. *Solvency* to International Solvency & Accounting (E) Working Group
    b. *Insurance Contracts* to International Solvency & Accounting (E) Working Group
    c. *Reinsurance* to Reinsurance (E) Task Force
    d. *Insurance Fraud* to Anti-Fraud (D) Task Force
    e. *Financial Conglomerates* to Financial Condition (E) Committee
    f. *Executive, Technical* to International Insurance Relations (G) Committee
    g. *Governance & Compliance* to Capital Adequacy Committee Corporate Governance Subgroup
    h. *ICP Review Task Force* to International Insurance Relations (G) Committee
    i. *Financial Stability Task Force* to International Insurance Relations (G) Committee
    j. *Joint Working Group on Microinsurance* to International Regulatory Cooperation (G) Working Group

2. NAIC **representation:**
    a. *Priority 1 committees* (Executive, Technical; Solvency, Insurance Contracts, Reinsurance; Governance & Compliance, Budget, Working Party Chairs, ICP Review Task Force, Financial Stability Task Force, Microinsurance) – Commissioner or senior department staff as principal representative
    b. *Priority 2 committees* (Implementation; Fraud, Financial Conglomerates, Accounting, Reinsurance Transparency) – NAIC staff as principal representative
    c. *Priority 3 committees* (Laws & Regulations, Pension Coordination, Regional Coordination) – NAIC staff to monitor.

OECD

The Insurance and Private Pensions Committee (IPPC) of the Organization for Economic Cooperation and Development (OECD) gathers 31 developed countries in semi-annual meetings to discuss a variety of issues at meetings held semi-annually. The U.S. delegation is headed by the U.S. Department of Commerce, with participation by the NAIC and representatives from the U.S. private sector.

OECD Action Plan:
At the **OECD IPPC meetings**, the NAIC should:
1. Report on regulatory and market developments of interest and relevance to IPPC members.
2. Influence the development of insurance sector studies and analyses to ensure a fair and accurate representation of the U.S. system.
3. Support private sector efforts to encourage OECD work in the creation of well-regulated, competitive insurance markets, and education on the benefits of insurance to economic development.
4. Oppose OECD initiatives which overlap with international standard setting undertaken at the IAIS or Joint Forum, or which are inconsistent with the U.S. regulatory system.

Joint Forum

The Joint Forum is comprised of banking, securities and insurance regulators from the Basel Committee on Banking Supervision (BCBS), the International Organization of Securities Commissions (IOSCO) and the IAIS. The Joint Forum is focused on the analysis of regulatory issues that apply across the financial sectors.

Joint Forum Action Plan:

1. The International Committee should:
    a. Provide input to the Officers on selection of a Commissioner to attend all meetings of the **Joint Forum** as representative of the IAIS, and
    b. Influence the research and development of papers on cross-sectoral financial regulatory issues.
2. The NAIC participation, and comments on draft projects, should be coordinated by the International Insurance Relations (G) Committee, with input from other NAIC committees.

Financial Stability Forum

The Financial Stability Forum (FSF) convenes financial sector regulators and policymakers from highly developed countries[1], and representatives of international bodies[2] including the Basel Committee, IOSCO, and the IAIS. The United States is represented by the Federal Reserve Board, the U.S. Department of Treasury and the Securities and Exchange Commission (SEC).

The NAIC has participated in FSF meetings as chair of the IAIS, representing the insurance sector. Whenever the NAIC does not chair the IAIS Executive Committee, the NAIC should seek to participate as a member of the U.S. delegation to the FSF.

FSF Action Plan:

The NAIC should:

- Continue to cooperate with U.S. regulatory agencies on the **Financial Stability Forum** delegation,
- Participate actively in the IAIS Financial Stability Task Force, and
- Seek inclusion of the NAIC in the U.S. delegation to the FSF meetings.

II. INTERNATIONAL TRADE

NAIC interacts regularly with the Office of the U.S. Trade Representative (USTR) to advise the trade negotiators of U.S. insurance regulatory practices in the context of multilateral (General Agreement on Trade in Services (GATS)), regional, and bi-lateral trade agreements.

In connection with U.S. trade negotiations, the NAIC should work closely with the U.S. industry and federal trade officials to fully understand:

- U.S. industry's business objectives in other countries;
- The regulatory structure in place; and,
- The U.S. government's overall trade policies.

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[1] United States, Canada, Japan, Australia, United Kingdom, Germany, France, Italy, Singapore, Hong Kong.

[2] International Financial Institutions (World Bank, International Monetary Fund (IMF), Organization for Economic Cooperation and Development (OECD)), International Regulatory and Supervisory Groupings (IAIS, IOSCO, BCBS, Financial Action Task Force (FATF), Joint Forum, International Federation of Accountants (IFAC)) Committee on the Global Financial System, European Central Bank.

Trade Action Plan:
The NAIC should assist in the efforts of U.S. industry and the U.S. government to:
- Open and maintain competitive, transparent, well-regulated markets;
- Enhance the stability of regulatory practices in those countries
- Eliminate unnecessary "reservations" to U.S. trade commitments, and
- Enhance consumer protections.

NAFTA
The NAFTA Subgroup coordinates the NAIC's participation in the NAFTA Trilateral Insurance Working Group and the Financial Services Committee in the context of NAFTA and the Security and Prosperity Partnership.

NAFTA Action Plan: The NAIC should continue to participate in the **NAFTA** Trilateral Insurance Working Group to address cross-border insurance issues with Mexico and Canada.

Policy: With regard to discussions involving regulation of cross-border insurance:
- The NAIC should preserve the rights of states to supervise insurance in U.S., while exploring opportunities for "mutual recognition" with Canada and Mexico.
- The NAIC should work toward eliminating unnecessary barriers to cross-border insurance in North America.

III. REGULATORY COOPERATION

The NAIC engages in regulator-to-regulator dialogues with non-US regulators as a way of addressing issues of mutual concern. The principal objectives of these discussions are to facilitate information needs regarding cross-border insurance services; to coordinate policy and standard setting activities; and to address current regulatory issues and debates.

Regulatory Cooperation Action Plan:

1. **Europe**: The NAIC should maintain regular (minimum twice per year) regulator-to-regulator dialogues with EU insurance supervisors to address issues of mutual concern and to:
   a. Educate each other about our regulatory systems, and discuss domestic regulatory issues.
   b. Determine if there are opportunities for "mutual recognition".
   c. Coordinate EU and NAIC involvement in international fora, such as IAIS, OECD, Joint Forum, and FSF.
   d. Explore ways of achieving convergence of insurance supervision.
   e. Facilitate exchange of information among regulators to enhance domestic regulation.

2. **Other Countries**: The NAIC should meet often with regulators from other countries, according to a priority list and as issues arise.
   a. Priority countries include: Japan, Switzerland, Hong Kong, India, Egypt, Vietnam, South Korea, Brazil, China, Russia, ASSAL (Latin American region), and Thailand.

3. **Other Dialogues**: The NAIC should participate in forums on international financial and regulatory policy together with other U.S. financial regulators.
   a. Where financial regulatory "principals" participate, the NAIC should be represented by a Commissioner or senior department staff.
   b. Where financial regulators are represented by staff, NAIC should be represented by NAIC International Relations staff.

Technical Assistance

The NAIC should engage in meaningful technical assistance activities, preferably in collaboration with (and funded by) other organizations (e.g., World Bank). Opportunities arise throughout the year to participate in training programs abroad.

The NAIC also conducts an International Internship Program which, since 2002, has placed insurance regulators from other countries in state insurance departments for on-the-job training. Initially instituted pursuant to an MOU with the China Insurance Regulatory Commission, the program has placed participants from China, Brazil, Korea, Egypt, Vietnam, India, Lebanon, Jordan, British Virgin Islands, Thailand, Albania, Bulgaria, Saudi Arabia, Serbia and Russia. Host states have included Alabama, Arkansas, California, Colorado, DC, Georgia, Hawaii, Illinois, Kentucky, Massachusetts, Montana, Nebraska, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Texas and Washington.

Technical Assistance Action Plan:

1. The NAIC should continue to offer an **International Internship Program** for non-US regulators twice per year.
    a. Participants cover their own costs;
    b. NAIC provides a scholarship program for up to 50% of interns' costs (four scholarships per semester per year)
    c. NAIC covers the costs (lodging, U.S. transportation) of five interns from China Insurance Regulatory Commission (CIRC) through 2009; and,
    d. NAIC contributes in kind in the form of an orientation program in Kansas City, and overall program management;

2. NAIC should participate in **training programs** abroad:
    a. When they coincide with Member participation in local meetings (eg., IAIS training seminars held in conjunction with triennial meetings); or,
    b. When they involve MOU countries.

3. Representatives:
    a. NAIC should be represented at **technical assistance meetings** by Commissioners and Senior Department Staff, according to:
        i. Prior participation in meetings with the jurisdiction's regulators;
        ii. Special language or other relation to the jurisdiction.
    b. NAIC Staff should provide to the Officers three candidates to choose from.
    c. Prior to agreeing to participate, NAIC Staff should determine whether costs are covered by the host, or whether another source of funding from a government or non-profit entity is available.

4. NAIC should develop an **International Training Curriculum** for delivery to non-US regulators and encourage the participation of non-U.S. regulators in existing NAIC training programs.

NAIC 2008 International Calendar

Date	Meeting	Venue
January 15	**IAIS (International Association of Insurance Supervisors) Conference: Strengthening Supervision in Emerging Markets**	Beijing, China
January 28-29	**IAIS Executive Committee Retreat**	Brussels, Belgium
February 21-22	**Joint Forum**	Madrid, Spain
March 4	**Swiss-NAIC Insurance Regulatory Dialogue**	Basel, Switzerland
March 5-7	**IAIS Triannual Meetings**	Basel, Switzerland
March 14	**NAFTA: Trilateral Insurance Working Group**	Mexico City, Mexico
March 10-15	**Association of Latin American Insurance Supervisors (ASSAL)**	Buenos Aires, Argentina
March 18	**US-Japan Financial Sector Working Group**	Washington, DC
April 3-4	**Geneva Association: "Towards a Global Architecture for Insurance Regulations and Supervision"**	Geneva, Switzerland
April 8	**US-China Financial Sector Working Group**	Washington, DC
May 7-8	**Organization for Economic Cooperation and Development (OECD)/US Treasury International Conference on Financial Education**	Washington, DC
May 12-13	**IAIS-CGAP Joint Working Group on Microinsurance**	Hyderabad, India
May 14-16	**US-China Insurance Regulatory Dialogue**	Shanghai, China
May 19-23	**ASSAL Annual Conference/Training Seminar**	Madrid, Spain
June 5	**EU: Financial Markets Regulatory Dialogue**	Washington, DC
June 10	**US-India Financial and Economic Forum**	Washington, DC
June 16-18	**IAIS Triannual Meetings**	Seoul, Korea
June 18-20	**IAIS Global Seminar**	Seoul, Korea
June 19-20	**Joint Forum**	Washington, DC
June 25-27	**OECD Insurance Committee**	Paris, France
August 25-29	**NAIC-Brazil Training on InsureU**	Rio de Janeiro, Brazil
September [tent.]	**NAIC-Thailand Working Group**	Bangkok, Thailand
September 16-18	**IAIS Conference on Integrating Microinsurance into the Financial System – Regulatory and Supervisor Issues**	Basel, Switzerland
October 12-17	**IAIS Triannual Meetings/Annual Conference**	Budapest, Hungary
October 18	**IAIS Executive Retreat**	Budapest, Hungary
November 3-8	**IAIS-CGAP Joint Working Group on Microinsurance**	Cartagena, Columbia
November 6-7	**Joint Forum**	Sydney, Australia
November 11-14	**IAIS-ASSAL-NAIC Training Seminar**	San Salvador, El Salvador
December 4-5	**OECD Insurance Committee**	Paris, France