NCOIL
National Conference of Insurance Legislators
...for the states

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October 23, 2009

The Honorable Barney Frank
Chairman
House Financial Services Committee
2129 Rayburn House Office Building
Washington, D.C., 20515

The Honorable Spencer Bachus
Ranking Member
House Financial Services Committee
2129 Rayburn House Office Building
Washington, D.C., 20515

Dear Chairman Frank and Ranking Member Bachus:

As leaders of the National Conference of Insurance Legislators (NCOIL), we are writing to you to again express our opposition to H.R. 2609, the *Federal Insurance Office Act of 2009*—opposition that has strengthened in response to the most recent amendments. Our worst fears, as expressed in our September 12, 2008, letter to House Speaker Nancy Pelosi (attached), are being realized in the new draft of H.R. 2609, which moves well beyond the Committee's desire in 2008 to create an insurance information office for the federal government to a proposed new federal insurance czar at the U.S. Treasury Department.

We continue to disagree with the necessity for such an office and question its accountability and effectiveness. We believe that state regulation is successfully guiding insurers through the current economic downturn. Under state regulation, the insurance industry has always been, and continues to be, financially stable and solvent, unlike federally regulated entities.

The fact that in thirteen months, the debate has moved from information gathering to imposition of a more powerful Federal Insurance Office (FIO) greatly concerns us. The latest version of H.R. 2609 would grant the FIO the authority to steer insurers to the Federal Reserve for "heightened regulation," and an open-ended responsibility to "perform such other related duties and authorities as may be assigned to it by the Secretary."

The office's enhanced preemptive power and lack of answerability are alarming to state officials who have seen the success of checks and balances in the state system. H.R. 2609 permits a FIO—to be led by an unconfirmed appointee of the Secretary—to override existing law without meaningful dialogue with the states. In fact, as currently drafted, the FIO only must consult the states *prior* to requesting insurance data from the private sector and *after* a determination that a state law will be preempted. Other consultation with state officials is limited "to the extent the Director determines appropriate."

We have consistently argued that setting up a new insurance bureaucracy would be the first step in a process toward increased federal regulation, with many of the same consequences as proposed federal insurance chartering. Federal insurance regulation would result in a confusion of federal and state directives and would jeopardize important state consumer safeguards, such as complaint mechanisms and state guaranty fund safety nets—all without consumer demand. We must reiterate that to date, not one of us has had a constituent ask for federal insurance regulation. While certain large insurers and banks continue to petition for federal intervention, and certain Committee members may try to amend H.R. 2609 in that direction during markup, we urge you to remain, as we are, focused on the ultimate goal—that of consumer protection.

In May, we wrote to you outlining our ideas to address systemic risk in our financial markets. We stressed the importance of building on the strengths of—not replacing—our existing regulatory structure, including the system of state-based insurance oversight. We highlighted the need for state and federal coordination and wrote, "…the new horizontal structure should equally respect the expertise and contributions of the various financial services regulators, both state and federal." We stand by those positions.

In summary, we believe that states are responsible for the modernization of insurance. As state insurance legislators, we take that responsibility very seriously. NCOIL will continue to work with interested parties toward modernization, but cannot—and will not—endorse the establishment of a new federal insurance bureaucracy.

NCOIL lawmakers will consider a proposed resolution opposing the FIO during our November Annual Meeting and will ask state legislators from across the nation to join us in opposing what we believe to be an unnecessary proposal—one that would have inadvertent and dangerous consequences.

Sincerely,

Sen. James Seward (NY)
NCOIL President

Rep. Robert Damron (KY)
NCOIL President-Elect

Rep. George Keiser (ND)
NCOIL Vice President

Sen. Carroll Leavell (NM)
NCOIL Secretary

Sen. Vi Simpson (IN)
NCOIL Treasurer

cc: U.S. House Committee on Financial Services
U.S. Senate Committee on Banking, Housing, & Urban Affairs
NCOIL Legislators
Council of State Governments (CSG)
National Association of Insurance Commissioners (NAIC)
National Conference of State Legislatures (NCSL)
National Governors Association (NGA)

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