

# NCOIL

National Conference of Insurance Legislators

*...for the states*

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December 15, 2011

Hon. Michael McRaith  
Federal Insurance Office  
1500 Pennsylvania Ave., NW  
Washington, DC 20220

**Re: NCOIL Input on FIO Report "How to Modernize and Improve the System of Insurance Regulation in the United States"**

Dear Director McRaith:

On behalf of the National Conference of Insurance Legislators (NCOIL), I submit the following observations. As state lawmakers with a sole focus on insurance public policy, NCOIL believes strongly in our state-based system of insurance regulation. We believe that state regulation is successful—as exemplified during our nation's recent financial crisis—and that on-the-ground state officials best understand unique state markets. State legislators and regulators have fostered a system of regulation that protects consumers and provides healthy and competitive insurance markets.

Always with an eye towards improvement, NCOIL supports regulatory uniformity where necessary and has been working in the states toward targeted modernization on speed-to-market for life insurance products, company licensing, producer licensing, surplus lines regulation/taxation, market conduct examinations, and reinsurance collateral. NCOIL believes that states should continue on their regulatory path and not be deterred by those who might use the financial crisis—where state regulation was not at fault—to promote unnecessary federal intervention.

NCOIL believes that states, as "laboratories of democracy," in collaboration will continue to enhance consumer and solvency protection, and to promote innovation and competition, which we believe are the cornerstones of our already successful regulatory system.

### ***Speed-to-Market***

NCOIL helped develop and strongly supports the Interstate Insurance Product Regulation Compact—one of state regulation's biggest success stories. The Compact comprises 41 jurisdictions and provides "speed-to-market" for life products—products that do not vary from state to state—ensures critical consumer protections, and increases market competition and product availability. Its 41 member jurisdictions represent nearly 70 percent of the U.S. premium volume for life insurance, annuity, disability income, and long-term care insurance products.

NCOIL continues to advocate Compact adoption and at our November 2011 Annual Meeting unanimously adopted a *Resolution Encouraging States to Join an Interstate Insurance Product Regulation Compact* that was cosponsored by 15 NCOIL leaders from across the country—including from states that are not currently members of the Compact. We anticipate and look forward to continued growth of the Compact.

### ***Company Licensing***

NCOIL believes that another success of state regulatory modernization is our nationwide system for licensing insurers. NCOIL took a stand in 2002 for licensing reform—adopting a *Company Licensing Modernization Model Act*—and urged support in the states. The NCOIL model requires use of the current version of a National Association of Insurance Commissioners (NAIC) *Uniform Certificate of Authority Application (UCAA)* to license insurers, incorporates revisions to the UCAA into law, and repeals all company licensing requirements and forms not specifically contained in the UCAA. State legislators understand that all states are accepting the UCAA and are considered uniform states.

### ***Producer Licensing***

NCOIL has supported producer licensing uniformity and reciprocity efforts since 2000 and continues to work in the states to achieve reform. Following the passage of the federal *Gramm-Leach-Bliley Act* (GLBA), NCOIL endorsed an NAIC *Producer Licensing Model Act* (PLMA) in 2000 and dedicated a staff person to coordinate with state legislatures and insurance departments to advance its adoption across the country. NCOIL adopted a resolution in 2008 urging all states to fully implement applications and services available through the National Insurance Producer Registry (NIPR). At present, all states use certain aspects of the NIPR electronic licensing service.

NCOIL understands that a few obstacles remain to achieve full producer licensing reciprocity—some require attention from the legislatures, others from departments—and has urged the NAIC to work with legislators to address existing concerns. Numerous interested parties have endorsed a federal *National Association of Registered Agents and Brokers Reform Act* (NARAB II) as the solution. NCOIL has not taken a position on NARAB II, but thinks the states should be able to ensure that a licensed agent can efficiently operate in additional states.

### ***Surplus Lines***

NCOIL, The Council of State Governments (CSG), and the National Conference of State Legislatures (NCSL)—as well as many groups that asked Congress for surplus lines reform—support a *Surplus Lines Insurance Multi-State Compliance Compact* (SLIMPACT) as the only true response to the intent of the Dodd-Frank Act's *Nonadmitted and Reinsurance Reform Act* (NRRA). Despite the limited window Dodd-Frank provided states to enact reform, nine states enacted SLIMPACT bills in 2011.

NCOIL lawmakers and others believe SLIMPACT is the only policy solution that would:

- ease the burdensome current system of surplus lines tax allocation and collection
- supply the uniformity that Congress asked for in the NRRA—by providing for important foreign insurer eligibility requirements and the use of a single uniform policyholder notice
- ensure that states receive their fair shares of premium tax dollars

SLIMPACT states have already developed draft bylaws and rulemaking rules and have tentatively approved a simple allocation formula that has received praise from regulators and industry representatives alike—a formula that is based on readily accessible information.

NCOIL first supported the SLIMPACT concept in November 2007, and promptly called upon the NAIC to advocate for the enactment of SLIMPACT. After it was clear that Dodd-Frank would include NRRA provisions—and because SLIMPACT was already developed and was based on the widely successful life insurance Compact—NCOIL in 2010 again urged regulators to support SLIMPACT. In late 2010, NCOIL worked to amend SLIMPACT to address regulator concerns and ultimately adopted a slimmed-down version that limited the scope of SLIMPACT while still providing necessary uniformity. NCOIL will maintain outreach to regulators to affect that appropriate policy solution.

### ***Market Conduct***

NCOIL strongly supports modernizing market conduct exam processes and has been working since 2000 on reform. NCOIL conducted studies in 2000 and 2003 that found duplication in market conduct exams, lack of interstate collaboration, and a need for statutory authority. NCOIL adopted a *Market Conduct Surveillance Model Law* in 2006 that would enhance state collaboration, prevent unnecessary market conduct exams, and cut down on burdensome costs by focusing on market analysis measures prior to examination, a structure for performing targeted exams, and domiciliary state responsibility.

Industry representatives remain concerned with duplicative exams, high exam costs, and the lack of interstate collaboration on multi-state exams. To help quantify industry concerns, NCOIL in 2011 asked industry representatives for data on exam costs and frequency and received comments from ACLI, AIA, NAMIC, and PCI. ACLI, AIA, and NAMIC comments were shared with you during your consultation with NCOIL Immediate Past President Rep. George Keiser (ND) and with NCOIL staff.

NCOIL will continue to work with regulators to achieve interstate collaboration and cost containment measures and believes that our model act would address such issues.

### ***Reinsurance Collateral***

Since 1999, NCOIL has advocated for reinsurance collateral rules that are even-handed and has encouraged

the NAIC to take action accomplishing that. In 2002, NCOIL issued support for an *Approved List of Reinsurers Model Act*, which would have lowered collateral for financially sound non-U.S. reinsurers. NCOIL then urged NAIC in a 2005 resolution to make tangible progress on reinsurance reform. After a decade of urging regulators to develop an even-handed approach to reinsurance collateral, NCOIL is encouraged that

interested parties have agreed to a sliding scale concept and that the NAIC has amended its *Credit for Reinsurance Model Act* to guide states that wish to develop such a system.

NCOIL continues to investigate—in addition to reinsurance collateral—state impacts of:

- an emerging, overarching framework for global regulation (known as ComFrame)
- critical international accounting changes
- an NAIC Solvency Modernization Initiative (SMI)
- U.S. trade activity

### ***Systemic Risk***

As you contemplate Financial Stability Oversight Council (FSOC) efforts, I would like to reaffirm state lawmakers' position that insurance companies in general should not be considered systemically important financial institutions (SIFIs) for purposes of enhanced federal supervision. On this point, NCOIL unanimously adopted a resolution in 2003 that read, in part, "insurance activities in general do not create systemic risk to the rest of the financial system or the U.S. economy at large, because of the industry's low concentration, low barriers to entry and policyholder and beneficiary protection through the state rehabilitation, insolvency and guaranty fund system." NCOIL is concerned that subjecting insurers to another level of supervision could jeopardize the states' robust solvency protections.

NCOIL has also asserted that, as is recognized under Dodd-Frank, troubled insurers should continue to be directed to state mechanisms—including state rehabilitation and guaranty fund systems. State legislators and regulators have worked cooperatively to develop these comprehensive processes that protect insurance consumers when companies fail.

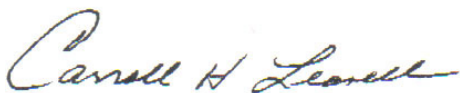
A federal one-size-fits-all approach to insurance regulation is unwarranted. NCOIL believes that any such approach would likely result in the decline of the very measures modernization is designed to achieve—market competition, innovation, and solvency protection.

Although regulatory uniformity has certain advantages, it should never be used as a rationale for eliminating the strengths evidenced by states in developing unique approaches to regulation on issues that meet their specific needs.

NCOIL appreciates the opportunity to provide comments for your study on modernizing U.S. insurance oversight. State lawmakers recognize the need to strengthen insurance regulation in certain key areas and will continue to press ahead with our efforts. We look forward to working with you and welcome a continued line-of-contact between NCOIL and FIO.

Please feel free to contact the NCOIL National Office at 518-687-1078 or the NCOIL Washington Office at 202-220-3014.

Sincerely,



Sen. Carroll Leavell (NM)  
NCOIL President

cc: NCOIL Legislators