

## NATIONAL CONFERENCE OF INSURANCE LEGISLATORS

Resolution Urging the U.S. Department of Housing and Urban Development to Refrain from Promulgating Any Regulation Intruding on the States' Traditional Role as the Primary Regulator of Homeowners' Insurance

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*Adopted by the NCOIL Executive Committee on February 26, 2012, and Property-Casualty Insurance Committee on February 25, 2012. Sponsored by Sen. Keith Faber (OH)*

**WHEREAS**, the United States Department of Housing and Urban Development published notice of a proposed rule in the Federal Register on November 16, 2011, titled "Implementation of the Fair Housing Act's Discriminatory Effects Standard"; and

**WHEREAS**, the purpose of the proposal is to establish a uniform standard of liability for facially neutral housing practices that have a discriminatory effect; and

**WHEREAS**, the proposed regulation would add language to existing Fair Housing Act regulations confirming such Act may be violated by a housing practice that has a discriminatory effect regardless of whether the practice was adopted for a discriminatory purpose; and

**WHEREAS**, under the proposed rule a discriminatory effect is deemed to occur where a facially neutral housing practice actually or predictably results in a discriminatory effect on a group of persons (i.e., causes a disparate impact); and

**WHEREAS**, the proposed rule lists the provision and pricing of homeowner's insurance as an example of a housing policy or practice that may have a disparate impact on a class of persons protected by the Fair Housing Act; and

**WHEREAS**, Congress specifically reserved the primacy of homeowners insurance regulation to the States with passage of the McCarran-Ferguson Act; and

**WHEREAS**, federal and state courts consistently reject challenges to homeowners insurance pricing practices on the basis of disparate impact in order to preserve state regulation of insurance underwriting and rating practices in accordance with the McCarran-Ferguson Act; and

**WHEREAS**, the proposed regulation could erode existing state laws that comprehensively regulate the provision and pricing of homeowner's insurance; and

**WHEREAS**, the erosion of the authority of the States to regulate insurance could harm consumers and the insurance marketplace by creating uncertainty and by inciting costly and unnecessary litigation.

**NOW THEREFORE, BE IT RESOLVED** that NCOIL urges the U.S. Department of Housing and Urban Development to respect the legislative intent of Congress as expressed in the McCarran-Ferguson Act to reserve the primacy of regulation of homeowners insurance to the States and expressly disclaim from the purview of the proposed rule any impact on the underwriting, rating or availability of homeowners insurance; and

**BE IT RESOLVED** that NCOIL urges the Director of the Federal Insurance Office to advise the U.S. Department of Housing and Urban Development to respect the current authority of the States to regulate insurance under the McCarran Ferguson Act; and

**BE IT FINALLY RESOLVED** that a copy of this resolution shall be sent to Members of Congress and the Secretary of the U.S. Department of Housing and Urban Development.