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NATIONAL COUNCIL OF INSURANCE LEGISLATORS (NCOIL)

RESOLUTION ASSERTING MCCARRAN-FERGUSON REVERSE PREEMPTION OVER THE SUPERVISION OF INSURANCE COMPANIES BY THE FEDERAL RESERVE BOARD AND ITS EXAMINERS

**Sponsored by Sen. Dan "Blade" Morrish (LA)*

**Adopted by the Financial Services Committee on December 6, 2018 and the Executive Committee on December 8, 2018*

WHEREAS, the Congress, having concluded that the states, by virtue of their experience and proximity to consumers, are best suited to regulate the business of insurance, a critically important part of the nation's economy. Thus, Congress formalized the longstanding system of state regulation by passing the McCarran-Ferguson Act, "declar[ing] that the ... regulation and taxation by the several States of the business of insurance is in the public interest," instructing that "[t]he business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business," and implementing a unique reverse preemption regime, under which "[n]o Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance ... unless such Act specifically relates to the business of insurance," resulting in the states retaining the jurisdiction and authority to regulate the market conduct and solvency of insurance companies operating within the states; and

WHEREAS, the states conduct both market conduct examinations to review the compliance of insurance companies with state consumer protection laws and execute financial examinations to ensure the solvency, and ultimate ability to honor policyholder obligations, of insurance companies in accordance with state laws; and

WHEREAS, although Congress has, from time to time, passed laws that specifically relate to insurance for the purpose of establishing limited and specific federal oversight and/or standards, no federal laws alter the basic jurisdiction of the states over, and responsibility for, nor enable the dual regulation of, insurance companies' market conduct and solvency; and

WHEREAS, Congress, in passing the Gramm-Leach-Bliley Financial Services Modernization Act of 1999, recognized that the proper regulation of complex financial services holding company systems required that "[t]he insurance activities of any person ... shall be functionally regulated by the States";

WHEREAS, the Federal Reserve Board in the Dodd-Frank Act has been given limited and targeted authority over certain insurance holding companies for the purpose of furthering their supervision of those holding companies' Federally regulated banking subsidiaries;

WHEREAS, Dodd-Frank requires the Federal Reserve Board, "to the fullest extent possible, rely on ... the examination reports made by other Federal or State regulatory agencies relating to a savings and loan holding company and any subsidiary," to "consult with ... the appropriate ... State regulatory agency ... for ... a functionally regulated subsidiary," and, "to the fullest extent possible, avoid duplication of examination activities, reporting requirements, and requests for information";

WHEREAS, the Federal Reserve Board has conceded that, "for all the broadening of our statutory mandate, one feature of the financial regulatory system that the Dodd-Frank Act preserved was the functional regulation of holding company affiliates based on the kind of financial intermediation in which they are engaged";

WHEREAS, inconsistent with this framework, and despite the comprehensive and effective regulation of insurance companies' market conduct and solvency by State insurance regulators, the Federal Reserve Board has over-extended its examination powers by routinely requiring insurance companies to supply information and responses to inquiries of the sort in practice that are the province of those of the day-to-day functional regulator of these companies, on whose work Federal Reserve Board examiners are statutorily required "to the fullest extent possible, rely on" and "avoid duplication" with, and that relate solely to the insurance operations of insurance companies that also have a federally regulated bank; and

WHEREAS, the Federal Reserve Board's examiners' exercise of such powers will most likely conflict with, the jurisdiction of State insurance regulators over solvency and market conduct regulation or, at best, will be duplicative; and

WHEREAS, such practices by Federal Reserve Board examiners are inconsistent with the testimony given by Vice Chairman of Supervision for the Federal Reserve Board Randal Quarles in Congress on April 17, 2018 and again on April 19, 2018;

BE IT NOW THEREFORE RESOLVED, that the National Council of Insurance Legislators (NCOIL) calls upon the Federal Reserve Board to direct its examiners that the insurance operations of state-regulated insurers, including those affiliated with a financial institution, are regulated by the individual states and that the Federal Reserve Board's examinations are, to the fullest extent possible, to rely upon the examination reports and other work of state insurance regulators and not to duplicate and/or conflict with the states' regulatory powers over the insurers' market conduct or solvency; and

BE IT NOW FURTHER RESOLVED, that NCOIL encourages Congress to provide oversight and, if necessary, enact legislation to ensure that the Federal Reserve Board's

supervisory rules are limited as identified herein, particularly as they relate to the Federal Reserve Board's examination of insurers, including those that are affiliated with a federally regulated financial institution; and

BE IT NOW FURTHER RESOLVED, consistent with the McCarran-Ferguson Act, the Gramm-Leach-Bliley Act, and the Dodd-Frank Act, and in the interests of avoiding duplicative and conflicting regulation of the insurance industry which is a substantial and critically important part of the country's economy, NCOIL calls upon the Federal Reserve Board to consult with, defer to, and rely on to the fullest extent possible, and to avoid, to the fullest extent possible, duplication of, the work of state insurance regulators on matters involving the regulation of insurance operations and solvency of insurers, regardless of the insurers' affiliations with federally-regulated financial institutions;

AND, BE IT FURTHER RESOLVED that a copy of this Resolution be sent to the President of the United States, the Chairman of the Board of Governors of the Federal Reserve, the Secretary of the U.S. Treasury, the Director of the Federal Office of Insurance, the Chairman of the U.S. Senate Committee on Banking, Housing and Urban Affairs, and the Chairman of the Committee on Financial Services of the U.S. House of Representatives.