

INSURANCE REGULATION – THE NEED FOR THE “RIGHT” REFORM

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There is little doubt that serious, significant reform of insurance regulation is necessary. Across America, there is a growing recognition of the need for greater uniformity and efficiency in the current state-based regulatory system. The only real dispute is over how best to implement insurance reform, not whether it should be undertaken.

Almost every industry stakeholder—including insurance companies, agents and brokers, consumers and regulators—has come forward to voice significant concerns about the existing regulatory system. It has been rightly characterized as slow, inefficient and a patchwork of different laws and regulations that adds unnecessary expense. These criticisms are accurate, and there is a desperate need for a common-sense solution.

It is a fact that insurance agents and companies have legitimate issues and problems with the existing system. Multi-state agent licensing, at present, is an arduous task due to the lack of regulatory uniformity from state to state. Company licensing can also be burdensome, and it is difficult for insurance companies to bring new insurance products to market quickly due to the need to satisfy different regulations. Even in the surplus lines marketplace, where one expects to find more progressive regulation due to the nature of the market and the risks involved (large commercial or unique), overlapping and inconsistent requirements hamper business.

Currently, a push is underway by some large insurance companies for Congress to establish an “optional federal charter” (OFC) for the insurance market, in an attempt to solve these and other inefficiencies. This unprecedented move would create a parallel federal system of regulation and supervision for insurers and producers, ostensibly modeled on the current regulatory system for banks. Insurers choosing to become federally regulated would be regulated primarily by a new federal Office of National Insurance patterned on the Office of the Comptroller of the Currency (OCC), which oversees national banks. The office would be within the Treasury Department and be headed by a Commissioner appointed by the President.

I am sure you are all very familiar with the Big “I” position on this issue: we oppose federal regulation, optional or mandatory, and support vigorous, but targeted reform and modernization of the state regulatory system. But you may ask yourself: Why does the Big “I” oppose OFC? What would federal regulation mean for me and how would the creation of a federal regulator affect my day-to-day business operations? If OFC is not the answer to reform insurance regulation, what is?

The Big “I” opposes OFC for many reasons, but for the sake of brevity, let’s look at three reasons. First, we believe that local regulation works best for consumers and that the state-based system ensures a level of responsiveness to both consumers AND agents that could not be matched at the federal level. If a federal regulator is created in Washington, D.C., your ability to represent your customers and yourselves will be negatively impacted. With the creation of a new Office of National Insurance in downtown Washington, agents would lose the ability to communicate with a regulator and his/her staff who may know you personally and who understand the local marketplace. Do you want to be able to pick up the phone and call your state regulator who understands local marketplace conditions or be forced to try and contact a distant, federal bureaucrat? Just recently, we all witnessed how a federal agency responds to local needs: FEMA’s response to the hurricanes in the Gulf Coast region. We don’t want to see a FEMA created to regulate the insurance market.

Some OFC supporters have argued that “regional” federal offices could be created to deal with local marketplace concerns. However, it would take more than fifty regional offices to come even close to the responsiveness of the current state system. It would also take more than the current 13,000 state regulatory personnel to do the same job because the federal government will be less efficient at regulating the market than the states, not more efficient. Why duplicate at the federal level what you already have in place at the states?

Second, we believe that the dual state/federal structure created by an OFC would be confusing to consumers and would require that independent agents become experts in both systems of regulation. A consumer could have his auto policy with a federal company, his homeowners’ policy with a state company, his umbrella policy with another federal regulator, and so on. As independent agents representing multiple companies (some choosing state regulation and others choosing federal regulation) you are going to have to know how to navigate BOTH systems to field questions and properly represent consumers.

The proponents of OFC argue that the insurance industry should have a dual regulatory system like the banking industry. There are fundamental differences between banking and insurance. The banking industry has no distribution force like the insurance industry. Nothing similar to the claims process exists in the banking industry, which results in thousands of consumer inquiries, comments and complaints for insurance regulators that would be redirected to Washington bureaucrats. Banking products are national in scope – loans, credit cards, deposits are not geographically unique, while property casualty deals with hurricanes, earthquakes, tornadoes, tsunamis, hail, mudslides, as well as the frequency of auto accidents, car thefts and much more that are geographically unique to a state, region, or even a local community.

Third, by eliminating all property-casualty regulatory form review (as the current version of OFC legislation does) consumers would be left unprotected, which would drastically increase independent agents' workload and increase your E&O exposure. Someone will have to review the forms and if it isn't the regulator it will fall to the agent. With complete and total deregulation of forms, an independent agent trying to compare products for your potential customers would be like creating the Tower of Babel in an independent agency.

It is true that an OFC could deal with some of our agent/broker licensing concerns, but the cost is too steep. In the end, IIABA believes that federal regulation will lead to additional, burdensome requirements for many Big "I" members regardless of the potential licensing benefits. We believe that there is a better way: targeted federal legislation, also known as "federal tools," to streamline the current, state-based system. Federal legislation establishing national standards only where necessary would make the appropriate reforms to the marketplace while maintaining and improving state insurance regulation rather than duplicating it as would occur under proposals to create a federal regulator. This concept provides the efficiencies and uniformity of a federal regulator without actually creating a federal regulator. Unlike an "optional" federal charter, a targeted reforms approach relies on the more than 100 years' worth of skill and experience the states have as insurance regulators and does not throw the baby out with the bathwater.

Federal tools can achieve the reforms that are truly necessary without all the baggage that comes with a federal regulator. Reform can be achieved without putting independent agents' livelihoods in the hands of a distant and unresponsive federal regulator subject to the political "winds of change" in Washington, D.C. Do you want a Washington bureaucrat making determinations on agent compensation, contingent commissions, disclosure requirements, privacy rules, market conduct examinations, CE requirements, fiduciary responsibilities, and more?

What specific reforms could be achieved with "federal tools"? Many, but let's take the three issues mentioned earlier. First, substantial agent licensing reform could be accomplished through the creation of NARAB, the National Association of Registered Agents and Brokers. NARAB would be a new private, non-profit entity responsible for agent/broker licensing and managed by a board composed of state insurance regulators and industry representatives, including an independent agent. (You will recall that the NARAB concept is not new and was part of the 1999 Gramm-Leach-Bliley Act).

"NARAB II" would give producers and agencies a choice between the current state-by-state licensing system and a national licensing portal (as long as that producer is duly licensed in a state). Producers comfortable with the current system and those licensed in a small number of states could choose to remain licensed in the traditional manner with no outside interference. Producers

operating in multiple jurisdictions unhappy with the current licensing burdens, however, could opt for NARAB and the ease of national licensing through a Self-Regulatory Organization (SRO)-type entity separate and apart from the federal government. For producers already licensed in a state, NARAB would effectively create one-stop producer licensing for additional licenses. It would preempt state laws regulating non-resident insurance producer licensing IF they discriminate against NARAB agents based on non-residency, or if they impose additional licensing requirements on non-resident NARAB agents beyond those established by the NARAB board. This would be a significant reform for all agents who have non-resident licenses, and it can be accomplished without a federal regulator. We have heard from literally thousands of independent agents who want this type of non-resident licensing reform as soon as possible.

Second, significant reforms could be made to the product approval process for life and p/c forms. For life products, which are more national in scope, federal legislation could build upon the NAIC's interstate compact for approval of life, disability, and long term care policy forms. For p/c products, targeted legislation could establish a coordinated electronic system for nationwide single point of filing, common filing nomenclature to reduce unnecessary forms filings and deviations, elimination of all unpublished desk drawer rules, and expedited review of forms through uniformly established and enforceable time deadlines.

Third, "federal tools" could create more uniformity and simplicity in state regulation of the surplus lines market. H.R. 5637, the Non-admitted and Reinsurance Reform Act of 2006, which the Big "I" strongly supports, would do just that. It would apply single-state regulation and uniform standards to the non-admitted insurance and reinsurance marketplace and give sole regulatory and enforcement authority to the insured's home state for the placement of non-admitted insurance. H.R. 5637 also creates a uniform system for the collection and allocation of premium tax obligations related to non-admitted insurance and streamlines eligibility requirements for non-admitted insurers to allow sophisticated commercial purchasers direct access to the surplus lines market.

We face a difficult battle to stave off OFC and other misguided federal regulatory schemes and to achieve our middle-ground, federal tools approach to bring real reform to our regulatory system. This is why independent insurance agents and brokers across America need to be completely involved in lobbying their elected federal representatives. We are working hard to turn up our grassroots efforts on this issue, and we strongly urge all agents and brokers to respond to the Big "I" grassroots action alerts; to stay in contact with your U.S. Representatives and Senators; to financially support your political action committee, InsurPac, and the campaigns of elected officials and candidates who support your goals; and to volunteer for these leaders and office-seekers who are sympathetic to vision of independent agents and brokers.

The battle to stop federal regulation is a high-stakes one. If you do not want a new federal insurance administration imposing overly-burdensome, generic one-size-fits-all standards from Washington, D.C., we need you to stay active and stay involved. If you need information about how you can help, contact the Big “I” Government Affairs team at (202) 863-7000.

As Ben Franklin said during the battle for America’s independence, “If we don’t all hang together, we will all hang separately.” Hang in there! Congress is on the road to reforming your regulatory system, but you need to help shape the destiny of your business and livelihood.