CFA Consumer Federation of America

STATEMENT OF

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BEFORE THE

CAPITAL MARKETS, INSURANCE AND GOVERNMENT SPONSORED ENTERPRISES SUBCOMMITTEE

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

"WORKING WITH STATE REGULATORS TO INCREASE INSURANCE CHOICES FOR CONSUMERS"

MARCH 31, 2004

Good morning, Mr. Chairman and members of the Subcommittee. I am Bob Hunter, Director of Insurance at the Consumer Federation of America. I formerly served in the federal government as Federal Insurance Administrator under Presidents Ford and Carter and as Texas Insurance Commissioner.

Attached to my statement is a letter signed by over 80 groups representing consumers, labor organizations, low-income Americans, housing groups and minorities. These groups include Consumers Union, the AFL-CIO, and a variety of state-based organizations. We have all asked Chairman Oxley to reconsider his road map for legislation to override state regulation of insurance.

Background

As I understand the road map proposed by Chairman Oxley in his comments to the National Association of Insurance Commissioners (NAIC), Congress would establish uniform standards for certain aspects of insurance regulation that the states would be required to enforce, "without deviations."[1] Among the areas that would be preempted is price regulation, which is termed "deleterious" to consumers, as well as the licensing of insurers and agents. Furthermore, an Interstate Compact would be required to be adopted by all states regarding some lines of insurance. Uniform market conduct exams would be required under the provisions of the recently adopted model proposed by the National Conference of Insurance Legislators (NCOIL). Certain other model bills proposed by the NAIC and/or NCOIL might be required to be adopted nationwide. Under a "choice of law" requirement, property-casualty policies for large, multi-state companies would only be regulated by the state in which the company is domiciled.

A Federal-State Advisory Council would be created, not to regulate but to coordinate to "see that these reforms are implemented" by all states.

The End of Federalism – With No Explanation of How this End is Achieved

"Intransigent" state legislatures would be cut out of the process, because Chairman Oxley has stated that "we can't rely on all 50 state legislatures to adopt exact uniform compliance." State Insurance Commissioners would become mere federal functionaries in preempted areas, acting as tools to carry out federal edicts. Chairman Oxley would take this preemptive approach despite his praise for the states as "laboratories for reform" and as "more responsive to the local marketplace as well as to local consumers."

The standards proposed in the road map are startling in their anti-federalist sweep. They do away with decades of deliberations by state legislators, largely eliminating their role in the preempted regulatory areas. This road map would even override the vote of the people of California in adopting the property-casualty insurance (excluding workers' compensation) regulatory system of Proposition 103 in 1988.

In his comments about the road map, Chairman Oxley states that there would be "no federal regulator." But how would Congress force state compliance with its edicts without the threat of a federal takeover if the states do not comply? Why would, for example, the elected Commissioner of California choose

[1] Comments of Chairman Oxley to the NAIC, March 14, 2004.

to enforce inadequate Illinois-style regulatory standards, the very standards that the voters of California rejected in 1988, in lieu of enforcing the overwhelmingly successful Proposition 103 standards that California voters want? The road map does not say what the "stick" is that will be used by the federal insurance czar to force the commissioners into compliance. Nor does it propose any financial "carrots" to entice a commissioner into enforcing federal standards that would so clearly disadvantage his or her constituents.

A Key Consumer Protection, Price Regulation, Must Not be Preempted

The road map makes a grievous error in overriding all state price controls on insurance. It ignores the differences between insurance and other products and the kind of regulation that is necessary to protect consumers when they are purchasing a complex legal document that is often not needed for many years. (See attached fact sheet, "Why Insurance is an Essential Public Good, not Some Normal Product that Can be Regulated Solely through Competition".)

The road map also does not anticipate crisis situations, for example a hurricane or other natural disaster. In the wake of Hurricane Andrew, Florida found out the value of having tough regulatory powers (and a legislature that could act quickly to put new controls in place) when the state avoided a crisis by imposing strict controls on prices and underwriting decisions in the months after that tragic event.

The road map leaves many insurance consumers vulnerable to predatory pricing and price gouging, while tying the hands of states that want to eliminate these abuses. These vulnerable consumers include small business owners, low and moderate-income consumers and minorities. Small businesses in low-income areas will be vulnerable to redlining. All small businesses will be at risk of price spikes during the hard market phase of the well-documented insurance cycle.

The kind of deregulation envisioned in the road map assumes that rate regulation and competition are mutually exclusive. They are not. California's auto insurance regulatory system has powerfully demonstrated the utility of maximizing both competition and prior approval of insurance rates for the benefit of consumers. On the other hand, the deregulation of California's workers compensation system has produced a crisis that Governor Schwarzenegger is dealing with this week. In Texas, the deregulation of the homeowners insurance system has caused a meltdown in the stability of prices in that state. (The attached fact sheets explain why regulation of insurance is necessary and why regulation and competition can work well together.)

In contrast, Chairman Oxley has pointed to Illinois as a regulatory model for the road map. There are very few states that have fewer protections for consumers. For instance, Illinois does not regulate rates at all. In fact, the Illinois system is not really a system. It is a non-system, created when the Illinois legislature became deadlocked and the requirements of the existing regulatory system expired under a sunset provision.

Since 1989, auto insurance rates have risen by 35 percent in Illinois (versus 30 percent nationally), while California's rates have ***fallen*** by 8 percent. Prior to adopting the new system voted in by the people of California in Proposition 103, California had the very deregulatory system that the road map now proposes to reinstate.

Americans deserve better than "least common denominator" consumer protection; they deserve the best. After intensive study, CFA has determined that the California system of regulation is the best in the nation (see "Why Not the Best?" At www.consumerfed.org). If you go forward with this road map, we urge you to use the nation's best system, not its worst, as your model.

Classifications – Redlining

A critical aspect of rate regulation is the approval of classifications. For instance, many states have moved to ban or limit the use of credit scoring, redlining by territorial definition and control of the use of other criteria that disadvantage poor people and minorities. All of these types of restrictions would be eliminated by the road map approach. Thus, insurers would be free to use whatever classes they choose: credit scoring, new territories, human genome information to determine who gets life insurance or Global Positioning System data to track the number of miles policyholders drive and where they go -- all with no oversight by states.

States would become helpless to stop redlining and abusive classification systems. They would also be helpless to enforce state consumer protections that might exceed the federal dictates.

Single Choice of Law

Under the road map, businesses would benefit from a single choice of law. As Chairman Oxley stated, "If Microsoft is purchasing liability insurance, the State of Washington would have the greatest interest in protecting the company." If the state of Washington has the greatest interest in pleasing Microsoft, this could often be to the detriment of its residents and consumers across the country. This proposal could provoke state competition to place further restrictions on the legal rights of consumers across the country, as states rush to please large corporations with tremendous economic clout that are based in their states.

Fear of Federal Regulation Has Already Caused Harm to Consumers

Members of the Subcommittee should be aware that the keen interest some members of the Financial Services Committee have shown in state insurance regulation has already led to regulatory changes by some states and the NAIC. However, many of these changes have not been positive for consumers. The NAIC has moved to eliminate inefficiencies and delays in product approval that were inherent in the system, which is positive. Consumers do not want inefficient regulation since they pay for it. Indeed, consumer groups were instrumental in helping to identify regulatory inefficiencies and in proposing reforms to eliminate them, including a 30-day limit for states to act in approving commercial rates and policy forms.

However, insurers have used this Congressional interest to push the states beyond cutting fat into cutting the muscle of needed consumer protections. Some states have rushed to deregulate commercial insurance and, in the rush to head off federal intervention, have left very small businesses, which are frequently not sophisticated buyers of insurance, exposed to abuse. Indeed, of the 5,667,774 firms in America, fully 60 percent (3,401,676) have fewer that five employees. Some states have even moved to deregulate personal lines of insurance, as South Carolina now proposes to do in home insurance and as a draft bill in Florida regarding automobile insurance. The NAIC has recently dusted off a proposal to deregulate personal lines and will be considering it once again.

States are doing this not because they necessarily think it proper, but because they have been told by insurers that this is the only way to keep them on board to head off an imminent federal takeover of insurance regulation. It is crucial that this Subcommittee send a signal to the states that mindless deregulation will harm millions of consumers and small businesses across this nation.

Improving Competition While Protecting Consumers

Any serious attempt to increase competition in the insurance industry and better protect consumers must take into account the differences that exist between insurance and other products. These differences require that many steps be taken to ensure that free markets function well, including:

- Some degree of imposed uniformity (of insurance forms) is necessary for consumers to understand and compare the complex legal document that is the insurance policy. This allows consumers to shop with the assurance that the products they are comparing are actuarially equivalent. The road map does not appear to require uniformity of forms, only uniformity in how forms are approved.

- Better information about policy prices, the level of service provided by insurers and their financial soundness must be provided to consumers if competition can succeed in spurring lower prices and better quality policies. The road map does not require better consumer information.

- Insurers should be prohibited from misusing classification information, such as credit scoring, or from misusing similar information in the future, such as human genome data for life insurance, or Global Positioning System information to track drivers for auto insurance rate purposes. By preempting state rate regulation, the roadmap will also block state prohibitions on the abusive use of classification information.

- Insurers should be prohibited from "redlining" in certain territorial designations, and other practices that prey upon the poor. By preempting state rate regulation, the road map will also block state prohibitions on redlining.

- Insurers should be required to take steps to help consumers afford the purchase of a mandated product. If insurance rates go up, demand does not decrease. Insurance demand is inelastic because states require auto insurance and lending institutions require home and other forms of insurance. If competition is to be fully effective, mandates must be balanced with measures that help consumers to afford insurance coverage, perhaps by requiring limits on underwriting such as mandated offers of insurance to good drivers and to home or business owners who meet building codes requirements. By preempting state rate regulation, the road map will make insurance harder to afford for many small businesses and consumers.

Improving Competition and Bringing Down Rates for Businesses: Expanding the Liability Risk Retention Act

In the last two years, high rates for property-casualty insurance have been a serious problem, especially for mid-sized and larger firms. Moreover, insureds of all sizes have experienced rate gouging. The rate problem is caused by a classic turn in the economic cycle of the industry, which has been accelerated by--but not caused by--the terrorist attacks of September 11th. By expanding the Liability Risk Retention Act, Congress would be spurring the creation of private alternatives to the over-priced insurance that still exists today and that occurs in all hard insurance markets.

The Product Liability Risk Retention Act of 1981 was developed by Congress as a direct result of the product liability insurance hard market of the mid-1970s. The current version of the Act, the Liability Risk Retention Act of 1986,[2] was passed to expand the Act to all commercial liability coverages as a direct response to the hard market of the mid-1980s. It allowed businesses to join together to form purchasing groups to buy liability insurance as a unit or to form self-insurance combinations by getting approved in only one state.

The National Association of Insurance Commissioners describes the RRA as follows:

> The purpose of the RRA is to increase the availability of commercial liability insurance which became severely restricted in the market crisis of the mid-1980s…An RRG[3] is a risk-bearing entity that must be chartered and licensed as an insurance company in one state…Once the group has obtained a license, it may operate in all states…and is regulated almost exclusively by the domiciliary commissioner…The RRA requires that the RRG be owned by its insureds and requires the insureds to have similar or related liability exposure. The only type of coverage an RRG is permitted to write is commercial liability insurance for its members and reinsurance with respect to the liability of any other RRG…A PG[4] may purchase only commercial liability insurance for its members…[5]

The creation and expansion of the RRA helped overcome the problems of the two previous hard markets and would do so again in the current hard market. Not only would expansion of the Act enable businesses to get together to cover other risks, but this option would also put pressure on the insurance industry to stop price gouging or risk losing market share.

Expansion of the RRA to cover property damage could also help companies, especially small and mid-sized firms, to insure against future terrorism losses. Even firms, office buildings and public facilities with high exposure to terrorism risk could benefit. Expansion of the RRA to cover property would offer airlines, for example, and similar insureds, the opportunity to spread risk and cover potential terrorism losses from property (e.g., the airplane hull) as well as liability.

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[2] 15 USC §3901 et sec.
[3] RRG is a Risk Retention Group operating under the RRA, the Risk Retention Act.
[4] PG is a Purchasing Group.
[5] Risk Retention and Purchasing Group Handbook, NAIC, 1999, Pages I1-I3.

Improving Uniformity of Regulation While Protecting Consumers

CFA has offered a number of proposals that, if implemented nationally, would improve uniformity of regulation and protect consumers. (Attached are recommended consumer principles and standards for insurance regulation.) However, the implementation of national standards should not be done in a way that stifles state regulatory innovation or that undermines the need for state or regional regulatory variations. After all, there are still many state or regionally based insurers. Insurance risks can obviously vary by region as can specific problems that spur insurance claims. If consumers in Texas are having problems with mold, Texas regulators should have free rein to place specific requirements on insurers that sell homeowners insurance in their state – including national insurers. This is why CFA supports minimum national standards that would put insurers and consumers on a "level playing field." This would improve uniformity of regulation and better protect consumers, while allowing states to exceed minimum standards to meet the specific needs of their residents.

Some of the model bills proposed by NAIC and NCOIL would provide adequate minimum consumer protections at the national level. However, much of this legislation, which is heavily influenced by insurers, would not protect consumers. CFA would support the elimination of countersignature laws in the states that still have them, because these rules are vestiges of an earlier non-competitive era and only protect insurance agents from competition from other, more efficient agents in other states. CFA would also support deregulation of property-casualty rates for truly large commercial interests, as NAIC and NCOIL have proposed, but only if such deregulation doesn't affect small and medium sized businesses that can't afford risk managers to negotiate for them. We would also consider endorsing the NCOIL market conduct model bill as a national minimum standard if it is strong enough, once NAIC finalizes its review.

Insurer Profits

In his comments about the road map, Chairman Oxley expresses concern about a "substandard return on equity among (property/casualty) insurers" with a "marketplace…at risk for a major collapse." There is no chance of this happening.

First of all, property/casualty insurance is not a high-risk business requiring a high return. The risk of insurance can be diversified through reinsurance and other risk-sharing/spreading mechanisms. The proof of this is that, although returns are historically "low," stock market returns are quite good for the leading writers of property/casualty insurance. The per share book value for Berkshire Hathaway has risen by twice the rate of the Standard & Poors 500 since 1990, according to Warren Buffet's current report to shareholders. Allstate's share value has more than tripled since 1990; Berkshire's share price is up tenfold and AIG's share price has risen more than seven fold.

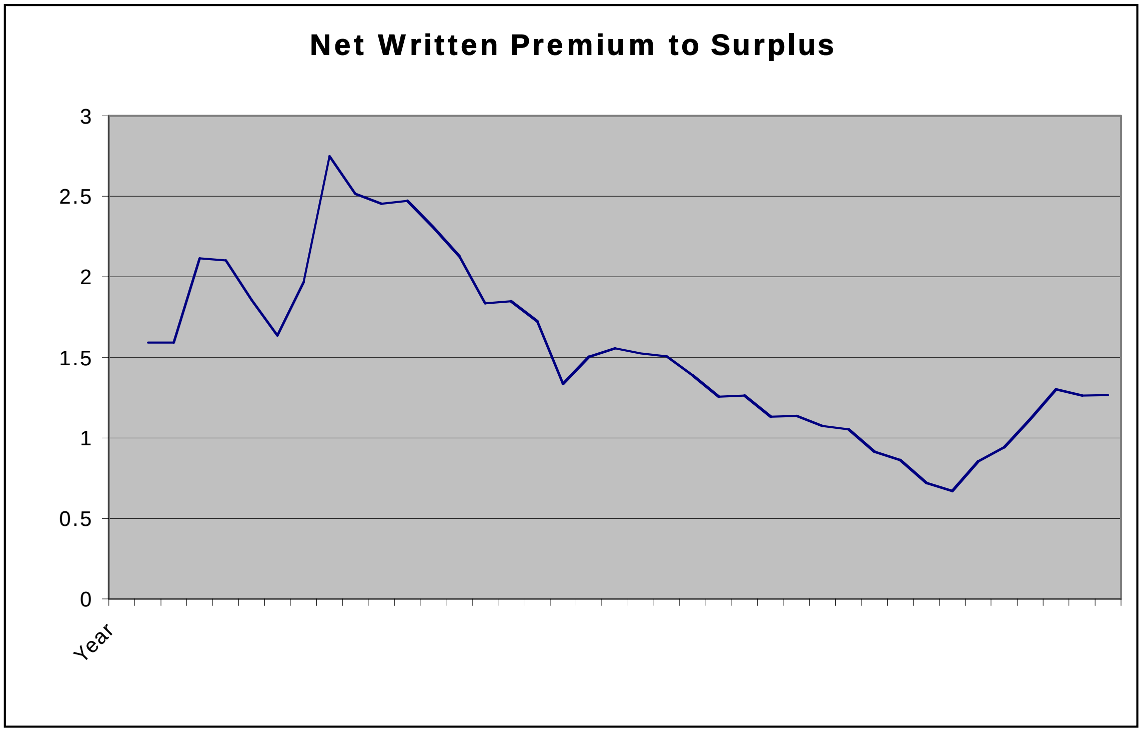
Second, the property/casualty insurance business is cyclical. Profits sink during the more competitive "soft," phase of the cycle and rise sharply during a hard market. The profits are excellent now, and are expected to remain good for some years to come, as the industry ends its hard market phase.

The top five stock insurance groups in the nation are Allstate, AIG, Zurich, Berkshire Hathaway and Travelers, with written premiums of $23.3 billion, $21.0 billion, $17.4 billion, $15.2 billion and $11.9 billion respectively. (State Farm, the nation's largest insurer at $42.7 billion, is a mutual insurer.)

Consider the outstanding profits of these insurers in 2003:

Allstate	$2.3 billion (16.5% ROE)
AIG	$9.3 billion (17.2% ROE)
Zurich	$2.1 billion (12.5% ROE)
Berkshire Hathaway	$8.2 billion (16.2% ROE)
Travelers	$1.7 billion (17.4% ROE)

Third, the most common test of the financial solidity of the property-casualty insurance industry is the ratio of net premiums written to surplus (retained earnings). Here is how that key ratio has performed over time:



As the chart reveals, the ratio has declined, generally, over time. During the recent soft market it rose from under 1 to 1 to about 1.3 to 1, still very safe by historical ratio standards. The recent increase in the ratio has now stabilized and, if past history of the years following a hard market is a guide, will start dropping again shortly. The historic safe level, known as the "Kenney Rule" for the financial writer Roger Kenney, is 2 to 1. Commissioners get particularly concerned if the ratio approaches 3 to 1.

The industry is doing very well and is fundamentally very sound. There is no impending crisis.

But, even if there were a need to increase the profits of the property-casualty insurance industry, why choose the Illinois system to do that? The profit of insurers in Illinois was just below the national average over the decade 1994-2003. Massachusetts, which has a system of rate regulation that Chairman Oxley would likely oppose, had profits of over 12 percent during that period, compared to Illinois' 7.5 percent and the nation's 7.7 percent. California's auto insurance profits were almost 60 percent higher than the Illinois profits despite the amazing drop in premiums California consumers enjoyed over this time period.

Conclusion

On behalf of all the groups that signed the letter attached to this testimony, I ask that this subcommittee not move forward with this ill-advised road map concept. We are more than willing to work with the members of the Subcommittee and state regulators on proposals that will improve uniformity of regulation and the speed with which insurance products are brought to market -- without sacrificing consumer protections. Unfortunately, the road map does not achieve this balance.

Consumer Federation of America

March 26, 2004

The Honorable Michael Oxley
Chairman, Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Re: Opposition to Insurance Road Map

Dear Mr. Chairman:

The over 80 undersigned consumer, low income, housing, minority and labor organizations from throughout the country strongly urge you to reconsider your decision to offer legislation that will override state regulation of insurance rates. This unprecedented federal intrusion into state insurance regulation would leave millions of consumers vulnerable to price gouging, as well as abusive and possibly discriminatory insurance rating practices. It would also open the door to a return to insurance redlining, as deregulation of prices would include the lifting of state controls on territorial line drawing. States would also be helpless to stop the misuse of "risk classification" information for pricing purposes, such as credit scoring, territorial data, and the details of consumers' prior insurance history.

Our concerns with this proposal are not just with the elimination of rate regulation. For example, the "choice of law" provision – which would only allow the state of domicile of commercial policyholders to regulate the terms of these policies -- could provoke state competition to place further restrictions on the legal rights of their residents, as states rush to please large corporations with tremendous economic clout that are based in their states.

State insurance regulation is also critical to business and labor, particularly in workers' compensation. Every business must purchase workers' compensation insurance. Without rate review, businesses are overwhelmed with premium increases every time the insurance underwriting cycle turns to a hard market. California and Florida are but two examples of the crisis that occurs without effective regulation. States with effective regulation, such as Massachusetts and Virginia, have avoided these hard market crises. Effective state regulation must be expanded, not eliminated.

This proposal shows a fundamental misunderstanding of the way the insurance marketplace works. Insurance is an essential public good, not just any product that can be regulated solely through free market competition. Insurance policies are exceedingly complex legal documents. Most consumers can't look at an insurance policy and tell for sure whether they have a good one. Comparison shopping is very difficult because the amount, type and pricing of coverage can vary greatly. Once a policy is purchased, the test of its effectiveness may not arise for decades, when a claim arises. (Please see the attached fact sheet for more information on why insurance is not a normal product for the purposes of regulation.)

Relying on competition alone to control insurance prices and prevent abusive products is ineffective and dangerous for consumers. Insurers can maximize profits by denying older and sicker people health insurance or by denying inner city residents home and auto insurance. Price structures include "classifications" which need governmental review for fairness and relevancy. Most insurers use credit scoring for insurance rating, which segregates out poorer people for denial or for higher prices. Some insurers now want to use the human genome to price life insurance, and Global Positioning Satellites to track consumers in order to price auto insurance. Regulation is required to control classification abuses – the number of potential "innovative" class systems that violate consumer rights and privacy is quite large. Information is also needed to police these abuses, such as zip code data to see where insurers are writing business and how much people are paying for insurance. (Please see the attached fact sheet on why effective regulation– not regulation solely through competition is needed in the insurance marketplace.)

You have cited the Illinois insurance regulatory system as a model for your federal intervention. There are very few states in the country that have fewer protections for consumers. For instance, Illinois does not regulate rates at all. Consequently, insurance rates have been shooting up sharply in Illinois compared to California, where voter-approved Proposition 103 has led to both tight rate regulation and vigorous insurance competition. Since 1989, auto insurance expenditures are up by 35 percent in Illinois and by 30 percent nationally. In California, they have dropped by eight percent. (See CFA's comprehensive study of the California system, "Why Not the Best?" on our website, www.consumerfed.org).

Another state that has been cited by you and by insurers as a deregulation model is South Carolina. We attach an analysis of the insurance situation in South Carolina since it deregulated insurance. Please note that the auto insurance rates in South Carolina are up, not down, since the law passed in 1999 and that South Carolina's rates have risen faster than California's.

The insurance industry promotes a myth that regulation and competition are incompatible. This is demonstrably untrue. Regulation and competition both seek the same goal: the lowest possible price consistent with a reasonable return for the seller. There is no reason that these systems cannot coexist and even compliment each other. The California insurance regulatory structure is a remarkable synthesis of effective regulation and competition. (See the attached fact sheet on how competition and regulation can work well together.)

When you presented your ideas on federal intervention to the National Association of Insurance Commissioners on March 14, 2004, you stated that there was a "capacity squeeze" in the insurance industry and that insurer rates of return (ROR) were too low. This is disputable, as some economists have stated that the markets work to produce the proper RORs and that the insurance industry does not need a high level of ROR due to its ability to diversify its risk through reinsurance and other means. However, if you are right, you seem to be saying that rates have been too low and that your intent is to let rates rise. Your solution to move to an Illinois system is remarkable, given that the returns in Illinois over the last decade for all property-casualty lines have been slightly less than the national average you claim is too low.

This extreme proposal is grievously flawed. It would override state laws that guarantee fair pricing and open the door to some of the worst insurance abuses that have occurred in the last thirty years, such as redlining. It would then tie the hands of states in addressing abuses that are occurring right now and might occur in the future, like the misuse of credit scoring and human genome information for insurance purposes. The consumers who are most vulnerable to the harm that it would cause are our nation's most vulnerable: the oldest, the poorest and the sickest.

We strongly urge you to reconsider your decision to move forward with this dangerous proposal.

Yours truly,

J. Robert Hunter

J. Robert Hunter
Director of Insurance

AFL-CIO
Alabama Watch
Arizona Consumers Council
Asian Law Caucus
Association of Flight Attendants
California Association of Local Housing Finance Agencies
California Coalition for Rural Housing
California Community Economic Development Association
California Housing Authorities Association
California PIRG
California Reinvestment Coalition
California Rural Legal Assistance Foundation
Center for Economic Justice
Center for Insurance Research
Center for Justice & Democracy
Center for Medical Consumers
Center for Public Interest Law
Civic Center Barrio Housing Corp.
Citizens for Consumer Justice (PA)
Citizens' Health Advocacy Group
Coalition for Consumer Rights (Illinois)
Colorado PIRG
Columbia Consumer Education Council
The Committee for Justice for All
Community Housing Developers, Inc.
Community HousingWorks
Concerned Clergy Coalition of Kansas City, MO
Connecticut PIRG
Consumer Action
Consumer Federation of America

Consumers for Auto Reliability and Safety
Consumers Union
Brenda J. Cude, Funded Consumer Representative
to the National Association of Insurance
Commissioners, and Professor, University of Georgia
East Bay Community Law Center
East Bay Habitat for Humanity
Fair Housing of Marin
Florida Consumer Action Network
Foundation for Taxpayer and Consumer Rights
E. Thomas Garman, Ph.D., Professor Emeritus,
Consumer Affairs, Virginia Polytechnic Institute
Greater Rochester Community Reinvestment Coalition
Homeowners Against Deficient Dwellings (HADD)
Illinois PIRG
Justice Organizers, Leadership and Treasurers
Maryland Consumer Rights Coalition
Maryland PIRG
Massachusetts Affordable Housing Alliance
Massachusetts Consumers' Coalition
Massachusetts PIRG
Michigan Consumer Federation
Dr. Regene L. Mitchell, Consumer Educator
Multicultural Real Estate Alliance For Urban Change
National Partnership for Women and Families
Neighborhood Economic Development Advocacy Project
New England Patients' Rights Group
New Jersey Citizen Action
New Jersey Consumers for Civil Justice
New Jersey PIRG
New Mexico PIRG
North Carolina PIRG
NYPIRG (New York)
Maryland PIRG
Oregon State PIRG (OSPIRG)
Our Bodies Ourselves (Massachusetts)
Pennsylvania PIRG
People's Medical Society
PIRG in Michigan (PIRGIM)
Public Interest Law Office of Rochester
Rhode Island PIRG
Sacramento Mutual Housing Association
San Diego Advocates for Social Justice
San Diego City/County Reinvestment Task Force
San Diego Housing Federation
Texans for Public Justice
Texas Legal Services Center
Texas PIRG
Texas Watch

USAction
U.S. PIRG
Vermont PIRG
Virginia Citizens Consumer Council
West Virginia Citizen Action Group
Wisconsin PIRG

CC: Representative Barney Frank, Representative Richard Baker, Representative Paul Kanjorski, Robert Gordon

WHY INSURANCE IS AN ESSENTIAL PUBLIC GOOD, NOT SOME NORMAL PRODUCT THAT CAN BE REGULATED SOLELY THROUGH COMPETITION

1. ***Complex Legal Document***. Most products are able to be viewed, tested, "tires kicked" and so on. Insurance policies, however, are difficult for consumers to read and understand -- even more difficult than documents for most other financial products. For example, consumers often think they are buying insurance, only to find they bought a list of exclusions.

2. ***Comparison Shopping is Difficult***. Consumers must first understand what is in the policy to compare prices.

3. ***Policy Lag Time***. Consumers pay a significant amount for a piece of paper that contains specific promises regarding actions that might be taken far into the future. The test of an insurance policy's usefulness may not arise for decades, when a claim arises.

4. ***Determining Service Quality is Very Difficult***. Consumers must determine service quality at the time of purchase, but the level of service offered by insurers is usually unknown at the time a policy is bought. Some states have complaint ratio data that help consumers make purchase decisions, and the NAIC has made a national database available that should help, but service is not an easy factor to assess.

5. ***Financial Soundness is Hard to Assess***. Consumers must determine the financial solidity of the insurance company. One can get information from A.M. Best and other rating agencies, but this is also complex information to obtain and decipher.

6. ***Pricing is Dismayingly Complex***. Some insurers have many tiers of prices for similar consumers—as many as 25 tiers in some cases. Consumers also face an array of classifications that can number in the thousands of slots. Online assistance may help consumers understand some of these distinctions, but the final price is determined only when the consumer actually applies and full underwriting is conducted. At that point, the consumer might be quoted a much different rate than he or she expected. Frequently, consumers receive a higher rate, even after accepting a quote from an agent.

7. ***Underwriting Denial***. After all that, underwriting may result in the consumer being turned away.

8. ***Mandated Purchase***. Government or lending institutions often require insurance. Consumers who must buy insurance do not constitute a "free-market", but a captive market ripe for arbitrary insurance pricing. The demand is inelastic.

9. ***Incentives for Rampant Adverse Selection***. Insurer profit can be maximized by refusing to insure classes of business (e.g., redlining) or by charging regressive prices.

10. ***Antitrust Exemption***. Insurance is largely exempt from antitrust law under the provisions of the McCarran-Ferguson Act.

Compare shopping for insurance with shopping for a can of peas. When you shop for peas, you see the product and the unit price. All the choices are before you on the same shelf. At the checkout counter, no one asks where you live and then denies you the right to make a purchase. You can taste the quality as soon as you get home and it doesn't matter if the pea company goes broke or provides poor service. If you don't like peas at all, you need not buy any. By contrast, the complexity of insurance products and pricing structures makes it difficult for consumers to comparison shop. Unlike peas, which are a discretionary product, consumers absolutely require insurance products, whether as a condition of a mortgage, as a result of mandatory insurance laws, or simply to protect their home or health.

WHY EFFECTIVE INSURANCE REGULATION IS NECESSARY

There are good reasons why insurance has, historically, been subject to regulation. The most obvious one is that a consumer pays money today for a promise that may not be deliverable for years. That promise must be secured from many threats, including insolvency and dishonesty.

No one seems to dispute the need for oversight of insurer solvency and bad management behavior. Insolvency regulation has been upgraded, thanks in large part to the interest in the issue of Warren Magnusson and John Dingell (which is how insurers first became aware of the value of Congressional pressure on state regulators.)

The big question is: can price and product regulation be eliminated? The insurance companies say "sure," but they never discuss the potential adverse impact on consumers.

Product Regulation

Product regulation is very important for consumers. Consumers cannot be asked to pick out good or avoid bad deals by reading a policy. If insurers are free to write any contract that they want, some sharp dealers will come in with deceptive policies that look good but take away the apparent coverage in the fine print. Competition will develop between insurers to offer poor products that unwary consumers will buy.

Consumers are in no rush to have bad products appear in the market, even though insurers insist that "speed-to-market" is somehow a critical issue. It makes no sense to remove front-end control of these products and wait for market conduct exams or, as is more common, lawsuits, to clean up the mess.[1]

However, consumer groups do want efficient regulation. Consumer organizations worked very hard with the NAIC to eliminate inefficient regulatory practices and delays, even helping put together a 30-day total product approval package. The groups' concern was not with fat cutting, but with removing regulatory muscle when consumers are vulnerable.

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[1] There are several reasons why it is dangerous for consumers if regulators focus too much on "speed to market." They risk overlooking the kind of regulation that has been needed to stop past abuses, such as: life insurance policies with rates of return that insurers did not deliver; consumer credit insurance policies that pay pennies in claims per dollar in premium, and race-based pricing of insurance policies. Second, in some trials of product deregulation in health insurance, policies with low prices often were found to have fine print that eliminated most coverage. Third, standards to ensure fair pricing, adequate disclosure and a more honest marketplace are urgently needed and should be a part of any process for faster product approval, particularly in the era of globalization and Internet sales. Fourth, CARFRA, a voluntary organization set up by the NAIC to offer "one-stop" approval over several states, is dangerous for consumers. CARFRA lacks direct accountability to the relevant public: consumers in affected states. There is no assurance that their standards for product approval will benefit consumers. For example, if a panel made up of Montana members approves a rate or policy for use in California, then it will be difficult for California consumers to object. CARFRA must be an independent, legally authorized entity with democratic processes, such as on-the-record voting, notice and comment rulemaking, conflict-of-interest standards, prohibitions on ex-parte communications, etc. CARFRA cannot rely on the industry it regulates to provide its funding. These same concerns with CARFRA also exist in the interstate compact concept.

Price Regulation

Price regulation is a complex issue. Price regulation considerations vary by line of insurance. Large commercial policyholders have insurance experts, called "risk managers," on staff. They need less help from government. However, individuals and small businesses may need help. They are not well-informed consumers and often go into the insurance purchase decision with an odd combination of fear and boredom. They frequently go to an insurer or agent and say something akin to "take me, I'm yours," a shopping strategy that does nothing to discipline the market price[2].

The degree of insurance regulation that is needed varies by line-of-business, something insurers often don't admit. As an example, consider three life insurance products: term life, cash value life and credit life. As the products are quite different, the regulatory response to these three products must be different.

Term life insurance is easy for consumers to understand. If one dies during the term, whatever that time frame is, one's beneficiaries receive the face amount of the policy. Consumers understand this very well so coverage is not an issue. Dead is dead, so service is not much of an issue compared to, say, auto claims. Solvency may also be somewhat less of an issue, depending upon the length of the term. The main decision consumers face centers on price. Excellent online price services exist.

Because of the simplicity of the decision-making process, term insurance prices are very competitive and have fallen year-by-year for decades. Price regulation is not needed in this line of life insurance.

Cash value insurance is a complex product. It is essentially a term policy with a bank account hidden inside the product. The problem is that the industry has resisted calls for tools to help consumers more easily understand what is going on inside the policy or to create suitability requirements for its agents. It is very difficult to know exactly what part of the first year premium (if any– often, it is none) goes into the bank account. Even actuaries who analyze insurance policies professionally say that they frequently can't tell a good product from a bad one without running the policy details through a computer. Consumers are confused. Competition is weak. Prices have not declined in the way term prices have.

For this product, prices should be subject to more control than exists today unless the industry truly agrees to stop the obfuscation and promote rules that let the consumer see what each policy is truly like.

Credit life insurance is a product sold along with a loan, such as a car loan. The car dealer may offer the coverage that would pay off a loan if an insured consumer dies, so that this person's family would own the car outright. The problem is that consumers do not go to car dealers to buy insurance. They have not even thought about it until the dealer starts the sales pitch. If the consumer decides to buy the coverage, the consumer does not then go out and shop for an insurance company. The dealer has already done that for the consumer.

[2] Another problem with insurance is the inertia of consumers. That is, the reluctance to change carriers for even fairly large price breaks. Consumers fear that new insurers would be more apt to drop them after a claim than their old insurer. This inertia is a drag on the competitive force of consumer decisions.

Guess what criteria the dealer uses in making the choice of credit life insurer? The amount of the commission is, of course, the decisive factor. (Some car dealers make more money selling insurance than cars.) Prudential Insurance Company once said in a hearing in Virginia that they did not sell much credit life insurance because “we are not competitive, our price is too low.”

This purchase-of-insurance-by-the-commissioned-agent-not-the-consumer/buyer has a name: “Reverse Competition.” In this line of insurance, competition drives the price up, not down.

Credit life insurance must have price regulation. States have recognized this by limiting the price that can be charged, with widely varying criteria. New York and Maine consumers pay one-fifth of the rate of Louisiana consumers, although Louisianans obviously do not die five times faster than Mainers. Even though the credit life insurers, car dealers and other powerful lobbyists have succeeded in keeping the price outrageously high in most states, at least there are price caps in every state, as there must continue to be.

In other words, a one-size-fits-all deregulation approach to insurance oversight would not deal with the complexity of many insurance products in the marketplace and would be very hazardous to America’s consumers.

IS REGULATION INCOMPATIBLE WITH COMPETITION?

The proof that competition and regulation can work together in a market to benefit consumers and the industry is the manner in which California regulates auto insurance under Proposition 103. Before Prop. 103, Californians had experienced significant price increases under a system of "open competition" of the sort Illinois now uses. (No regulation of price is permitted but rate collusion by rating bureaus is allowed, while consumers receive very little help in getting information on the quality of the insurance product, service, solvency and pricing.) Proposition 103 sought to maximize competition by eliminating the state antitrust exemption, laws that forbade agents to compete, laws that prohibited buying groups from forming, and so on. It also imposed the best system of prior approval (of insurance rates and forms) in the nation, with very clear rules on how rates would be judged.

As the Consumer Federation of America's in-depth study of regulation by the states revealed,[3] California's regulatory transformation--to rely on both maximum regulation and competition--has produced remarkable results for auto insurance consumers and for the insurance companies doing business there. The study reported that insurers have realized very nice profits, above the national average, while consumers saw the average price for auto insurance drop from $747.97 in 1989, the year Proposition 103 was implemented, to $717.98 in 1998. Meanwhile, the average premium rose nationally from $551.95 in 1989 to $704.32 in 1998. California's rank dropped from the third costliest state to the 20th.

As of 2001, the situation was even better. The average annual premium in California was $688.89 (Rank 23) vs. $717.70 for the nation. So, from the time California went from reliance simply on competition as insurers envisioned it to full competition and regulation, the average auto rate fell by 7.9 percent while the national average rose by 30.0 percent. A powerhouse result for consumers![4]

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[3] "Why Not the Best? The Most Effective Auto Insurance Regulation in the Nation," June 6, 2000; www.consumerfed.org.).

[4] State Average Expenditures & Premiums for Personal Automobile Insurance in 2001, NAIC, July 2003.

SOUTH CAROLINA AUTO INSURANCE DEREGULATION: HAVE CONSUMERS REALLY BENEFITED SIGNIFICANTLY?

The insurance industry points to the South Carolina Auto Insurance law change that took place in 1999 and claims that it is working well. This report will test this claim.

> "[NAIC] Director Csiszar's home state of South Carolina is a prime example of the benefits of free market reforms. By 1996, South Carolina's price control system had resulted in only 78 companies offering policies in the state and over 40 percent of insured drivers being placed in the assigned risk pool. Since the state adopted a flex-rating system backed by Director Csiszar in 1999, 105 new insurers have entered the market, average auto insurance rates have decreased, and the state's residual market plan insures less than 600 drivers, compared to more than 750,000 less than a decade ago. The end result of this modest reform is that the system is more fair and flexible, less political, and meets the needs of consumers."
>
> Press Release dated 2/4/04
> Property Casualty Insurers Association of America

CLAIM: AUTO INSURANCE RATES HAVE DECREASED

A. The "new" South Carolina system has caused higher rates for many consumers.

What insurers claim was a "dysfunctional" system was in fact a system that prevented insurers from redlining -- charging low income and minority consumers more because of where they lived. Under the Csiszar regime, insurers have had carte blanche to redline. In addition to the deregulation of rates, Csiszar adopted a regulation allowing insurers to use consumer credit information with no meaningful consumer protections. Csiszar allows insurers to charge higher rates to consumers simply because they buy the minimum limits of liability required by law. Why should a consumer be charged more just because he or she complied with the law? The numbers cited for average rates and rate changes mask the impacts on particular groups of consumers. While some consumers have fared okay under the let-insurers-do-whatever-they-want approach, many consumers have been hit with big rate increases. And the claims about lots of new insurers are equally hollow -- the "new" companies are simply the high-cost ("nonstandard") affiliates of insurers already operating in South Carolina. The numbers put forth by Csiszar's department are designed to hide the reality of the South Carolina market -- 21st century redlining as a "competitive market." What we don't see is market data to test the claims of success, data such as which companies are actually providing coverage in what zip codes and how rates have changed by zip code. We don't see the credit scoring models used by insurers that penalize consumers for being poor. We don't see the underwriting guidelines -- like prior liability limits -- that further penalize consumers for not being affluent.

B. Even the overall rate level has risen since the law was passed.

According to data published by the National Association of Insurance Commissioners, the average per car expenditure on insurance in South Carolina, the nation and California was:

Year	S.C.	USA	CA
1998	766	801	821
2001	744	817	795
Change			
‘98 to ‘01	-2.9%	+2.0%	-3.2%

There is some question about whether the South Carolina data are accurate, having to do with a technical issue.[5] But even if these data are accurate, it is clear that the average expenditure in South Carolina is up in every year except from 1998 to 1999. From 1998 to 1999, South Carolina’s average expenditure did drop by 8.2%. Interestingly, the national average also dropped that year, by 2.4%.

Rates in South Carolina did not drop by as much from 1998 to 2001 as those in California. California average expenditures have dropped by 3.2% from 1998 to 2001, while South Carolina’s expenditures dropped 2.9% in that time.

Consumer groups point to California’s regulatory system as the best in the nation. It relies on a very rigorous prior approval system of rates. As the Consumer Federation of America’s in-depth study of regulation by the states revealed,[6] California’s regulatory transformation has produced remarkable results. California’s auto insurance rates dropped from the third costliest state in 1989 to the 23rd costliest in 2001.[7] From the time California went from reliance simply on competition as insurers envisioned it to full competition and regulation, the average auto rate fell by 7.9%, while the national average rose by 30.0%.

So, even taking the most optimal period for South Carolina (and ignoring the possible data problem), the result is not as good as California’s result.

Automobile insurance reform in Hawaii provides another example of insurance reform that helps the state’s consumers, resulting in dramatic decreases in the cost of insurance. During the same 1998 to 2001 time period, Hawaii’s relative insurance cost went from the 11th highest in the nation to the 21st highest with premium reductions of 11.6%. Substantial parts of these decreases were the result of a strengthening of the state’s prior approval law[8].

From 1997 (the year reform was passed in Hawaii) to 2001, the premiums dropped by an even more substantial 22.7%, moving the state from the 4th highest to the 21st highest rates in the nation. Again, substantial portions of these reductions were a direct result of the strengthening of the Commissioner’s authority in approving rates.

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5 There is question if the full recoupment charges, monies collected to fund the reinsurance facility, are in the data reported to the NAIC.

6 “Why Not the Best? The Most Effective Auto Insurance Regulation in the Nation,” June 6, 2000; www.consumerfed.org.).

7 State Average Expenditures & Premiums for Personal Automobile Insurance in 2001, NAIC, July 2003.

8 Ibid.

In addition to these dramatic reductions in the cost of insurance, competition among insurance carriers in Hawaii increased (evidenced by a dramatic increase in automobile insurer advertising, reductions in consumer complaints regarding insurance availability, and other factors) and the number of uninsured motorists declined dramatically. The number of insured cars increased between year-end 1997 to year-end 2001 by more than 18% (far greater than any change in the state's population) providing convincing evidence that more and more previously uninsured drivers were buying insurance following passage of these reforms.

Experts in the South Carolina market advise CFA that auto earned premiums and associated rates have risen sharply in the state since 2001, the latest year in NAIC's analysis, and that South Carolina legislation provides virtually insurmountable obstacles for consumers to challenge the filings that bring about these automobile insurance premium increases.[9]

In South Carolina, the premiums grew by 30.2% from 1998 to 2002[10]. The population of South Carolina grew by 6.9% over that time.[11] The population adjusted premium increase in South Carolina was 21.8%. Similar calculations for the nation and California show a growth of 14.0% and 11.3% respectively.

It appears as though South Carolina Insurance Commissioner Csiszar agrees that increases are occurring. He has stated that "Since the law's adoption, the number of insurance companies writing auto insurance in the state has roughly doubled to about 160, while total premiums have gone from $1.65 billion to roughly $2 billion."[4] He is cited as referring to these increases as a "clear sign of success."[12]

CLAIM: CONSUMERS BENEFIT FROM THE JUMP IN NUMBER OF COMPANIES IN SOUTH CAROLINA

There has been a big jump in the number of insurance companies writing auto insurance in South Carolina, but that is largely due to the return to the market of high-priced so-called substandard insurance companies that are affiliates of insurers who were already in the market in South Carolina.

Under the previous law, good drivers were entitled to get insurance from the insurance company of their choice, an excellent protection for consumers. The 1999 law eliminated that protection. So, all of the high-priced running mates of established insurers came back into the state, since they now could force clients to buy policies from such insurers.

Here are some of the running mates that came back to South Carolina when this important consumer protection was eliminated:

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[9] "Kruger, the insurance department actuary, acknowledges that he adjusts down very few of the industry's roughly 3,000 rate requests each year. Rather than make frequent adjustments, he said, the department has established a policy that generally signs off on rate requests that are less than 25 percent. Requests above 25 percent undergo scrutiny and stand a good chance of being altered." Charleston Post and Courier, February 22, 2004.

[10] Report on Profitability by Line by State, 1998 and 2002 editions, NAIC

[11] U.S. Bureau of the Census.

[12] *Charleston Post and Courier*, 2/22/04.

1. <u>Allstate</u>

   Allstate Indemnity
   Deerbrook Ins. Co.

2. <u>Nationwide</u>

   Nationwide Mutual Fire Ins. Co.
   Nationwide Property & Casualty Ins. Co.

3. <u>Horace Mann</u>

   Allegiance Insurance Company
   Teachers Insurance Company

4. <u>State Auto</u>

   State Auto Fire Insurance Company
   State Auto P&C Insurance Company

5. <u>GEICO</u>

   GEICO Casualty Company
   GEICO General Insurance Company
   GEICO Indemnity Company

6. <u>ORION Group</u>

   Carolina American Insurance Company
   Guaranty National Insurance Company
   Peak P&C Casualty Insurance Corporation

7. <u>Travelers Group</u>

   Charter Oak Fire Insurance Company
   Phoenix Insurance Company
   Standard Fire Insurance Company
   Travelers Indemnity Company of America
   Travelers Indemnity Company of Illinois

8. <u>State Farm</u>

   State Farm Fire and Casualty Insurance Company

9. <u>Seibels Group</u>

   Catawba Insurance Company (now under administrative supervision in SC)
   South Carolina Insurance Company (now under administrative supervision in SC)

10. Liberty Group

Liberty Insurance Corporation
Liberty Mutual Fire Insurance Company

Consumers have been harmed by the influx of these high-priced insurers into South Carolina. What appears to be happening is that the established insurance companies that formerly offered policies at low prices are shifting people into their higher priced running mates. That is part of the reason that the initial drop in rates has given way to recent price spikes.

CONCLUSION

Commissioner Csiszar is now pushing to expand his auto insurance "successes" to homeowners and other property and casualty lines of insurance. According to Csiszar, the point of this new legislation is to completely remove the South Carolina Insurance Consumer Advocate's ability to challenge any rate increases at all[13]. The new legislation follows less than a year after the state's Consumer Advocate successfully challenged (among other things) a deal that had been cut between the Insurance Department and State Farm. The deal would have allowed for increases up to 524% for some coastal homeowners, and increases in excess of 300% in other areas of South Carolina[14].

Unlike South Carolina, California has not approved the use of credit scores or prior liability limits for rate setting purposes, thereby protecting the less affluent residents of the state.

At best, there has been modest improvement for a select few consumers in South Carolina, while others have been hurt. California's Proposition 103 system beats South Carolina's hands down and remains the system legislators should emulate.

[13] *Charleston Post and Courier*, 2/22/04.
[14] Consumer Advocate expert's (Simons') testimony in State Farm case

Consumer Principles and Standards for Insurance Regulation

1. Consumers should have access to timely and meaningful information of the costs, terms, risks and benefits of insurance policies.

- Meaningful disclosure prior to sale tailored for particular policies and written at the education level of average consumer sufficient to educate and enable consumers to assess particular policy and its value should be required for all insurance; should be standardized by line to facilitate comparison shopping; should include comparative prices, terms, conditions, limitations, exclusions, loss ratio expected, commissions/fees and information on seller (service and solvency); should address non-English speaking or ESL populations.
- Insurance departments should identify, based on inquiries and market conduct exams, populations that may need directed education efforts, e.g., seniors, low-income, low education.
- Disclosure should be made appropriate for medium in which product is sold, e.g., in person, by telephone, on-line.
- Loss ratios should be disclosed in such a way that consumers can compare them for similar policies in the market, e.g., a scale based on insurer filings developed by insurance regulators or independent third party.
- Non-term life insurance policies, e.g., those that build cash values, should include rate of return disclosure. This would provide consumers with a tool, analogous to the APR required in loan contracts, with which they could compare competing cash value policies. It would also help them in deciding whether to buy cash value policies.
- Free look period with meaningful state guidelines to assess appropriateness of policy and value based on standards the state creates from data for similar policies.
- Comparative data on insurers' complaint records, length of time to settle claims by size of claim, solvency information, and coverage ratings (e.g., policies should be ranked based on actuarial value so a consumer knows if comparing apples to apples) should be available to the public.
- Significant changes at renewal must be clearly presented as warnings to consumers, e.g., changes in deductibles for wind loss.
- Information on claims policy and filing process should be readily available to all consumers and included in policy information.
- Sellers should determine and consumers should be informed of whether insurance coverage replaces or supplements already existing coverage to protect against over-insuring, e.g., life and credit.
- Consumer Bill of Rights, tailored for each line, should accompany every policy.
- Consumer feedback to the insurance department should be sought after every transaction (e.g., after policy sale, renewal, termination, claim denial). Insurer should give consumer notice of feedback procedure at end of transaction, e.g., form on-line or toll-free telephone number.

2. Insurance policies should be designed to promote competition, facilitate comparison-shopping and provide meaningful and needed protection against loss.

- Disclosure requirements above apply here as well and should be included in design of policy and in the policy form approval process.
- Policies must be transparent and standardized so that true price competition can prevail. Components of the insurance policy must be clear to the consumer, e.g., the actual current and future cost, including commissions and penalties.
- Suitability or appropriateness rules should be in place and strictly enforced, particularly for investment/cash value policies. Companies must have clear standards for determining suitability and compliance mechanism. For example, sellers of variable life insurers are required to find that the sales that their representatives make are suitable for the buyers. Such a requirement should apply to all life insurance policies, particularly when replacement of a policy is at issue.

- "Junk" policies, including those that do not meet a minimum loss ratio, should be identified and prohibited. Low-value policies should be clearly identified and subject to a set of strictly enforced standards that ensure minimum value for consumers.
- Where policies are subject to reverse competition, special protections are needed against tie-ins, overpricing, e.g., action to limit credit insurance rates.

3. All consumers should have access to adequate coverage and not be subject to unfair discrimination.

- Where coverage is mandated by the state or required as part of another transaction/purchase by the private market, e.g., mortgage, regulatory intervention is appropriate to assure reasonable affordability and guarantee availability.
- Market reforms in the area of health insurance should include guaranteed issue and community rating and where needed, subsidies to assure health care is affordable for all.
- Information sufficient to allow public determination of unfair discrimination must be available. Zip code data, rating classifications and underwriting guidelines, for example, should be reported to regulatory authority for review and made public.
- Regulatory entities should conduct ongoing, aggressive market conduct reviews to assess whether unfair discrimination is present and to punish and remedy it if found, e.g., redlining reviews (analysis of market shares by census tracts or zip codes, analysis of questionable rating criteria such as credit rating), reviews of pricing methods, reviews of all forms of underwriting instructions, including oral instructions to producers.
- Insurance companies should be required to invest in communities and market and sell policies to prevent or remedy availability problems in communities.
- Clear anti-discrimination standards must be enforced so that underwriting and pricing are not unfairly discriminatory. Prohibited criteria should include race, national origin, gender, marital status, sexual preference, income, language, religion, credit history, domestic violence, and, as feasible, age and disabilities. Underwriting and rating classes should be demonstrably related to risk and backed by a public, credible statistical analysis that proves the risk-related result.

4. All consumers should reap the benefits of technological changes in the marketplace that decrease prices and promote efficiency and convenience.

- Rules should be in place to protect against redlining and other forms of unfair discrimination via certain technologies, e.g., if companies only offer better rates, etc. online.
- Regulators should take steps to certify that online sellers of insurance are genuine, licensed entities and tailor consumer protection, UTPA, etc. to the technology to ensure consumers are protected to the same degree regardless of how and where they purchase policies.
- Regulators should develop rules/principles for e-commerce (or use those developed for other financial firms if appropriate and applicable)
- In order to keep pace with changes and determine whether any specific regulatory action is needed, regulators should assess whether and to what extent technological changes are decreasing costs and what, if any, harm or benefits accrue to consumers.
- A regulatory entity, on its own or through delegation to independent third party, should become the portal through which consumers go to find acceptable sites on the web. The standards for linking to acceptable insurer sites via the entity and the records of the insurers should be public; the sites should be verified/reviewed frequently and the data from the reviews also made public.

5. Consumers should have control over whether their personal information is shared with affiliates or third parties.

- Personal financial information should not be disclosed for other than the purpose for which it is given unless the consumer provides prior written or other form of verifiable consent.
- Consumers should have access to the information held by the insurance company to make sure it is timely, accurate and complete. They should be periodically notified how they can obtain such information and how to correct errors.
- Consumers should not be denied policies or services because they refuse to share information (unless information needed to complete transaction).
- Consumers should have meaningful and timely notice of the company's privacy policy and their rights and how the company plans to use, collect and or disclose information about the consumer.
- Insurance companies should have clear set of standards for maintaining security of information and have methods to ensure compliance.
- Health information is particularly sensitive and, in addition to a strong opt-in, requires particularly tight control and use only by persons who need to see the information for the purpose for which the consumer has agreed to sharing of the data.
- Protections should not be denied to beneficiaries and claimants because a policy is purchased by a commercial entity rather than by an individual (e.g., a worker should get privacy protection under workers' compensation).

6. Consumers should have access to a meaningful redress mechanism when they suffer losses from fraud, deceptive practices or other violations; wrongdoers should be held accountable directly to consumers.

- Aggrieved consumers must have the ability to hold insurers directly accountable for losses suffered due to their actions. UTPAs should provide private cause of action.
- Alternative Dispute Resolution clauses should be permitted and enforceable in consumer insurance contracts only if the ADR process is: 1) contractually mandated with non-binding results, 2) at the option of the insured/beneficiary with binding results, or 3) at the option of the insured/beneficiary with non-binding results.
- Bad faith causes of action must be available to consumers.
- When regulators engage in settlements on behalf of consumers, there should be an external, consumer advisory committee or other mechanism to assess fairness of settlement and any redress mechanism developed should be independent, fair and neutral decision-maker.
- Private attorney general provisions should be included in insurance laws.
- There should be an independent agency that has as its mission to investigate and enforce deceptive and fraudulent practices by insurers, e.g., the reauthorization of FTC.

7. Consumers should enjoy a regulatory structure that is accountable to the public, promotes competition, remedies market failures and abusive practices, preserves the financial soundness of the industry and protects policyholders' funds, and is responsive to the needs of consumers.

- Insurance regulators must have clear mission statement that includes as a primary goal the protection of consumers:
- The mission statement must declare basic fundamentals by line of insurance (such as whether the state relies on rate regulation or competition for pricing). Whichever approach is used, the statement must explain how it is accomplished. For instance, if competition is used, the state must post the review of competition (e.g., market shares, concentration by zone, etc.) to show that the market for the line is workably competitive, apply anti-trust laws, allow groups to form for the sole purpose of buying insurance, allow rebates so agents will compete, assure that price information is available

from an independent source, etc. If regulation is used, the process must be described, including access to proposed rates and other proposals for the public, intervention opportunities, etc.

- Consumer bills of rights should be crafted for each line of insurance and consumers should have easily accessible information about their rights.
- Insurance departments should support strong patient bill of rights.
- Focus on online monitoring and certification to protect against fraudulent companies.
- A department or division within regulatory body should be established for education and outreach to consumers, including providing:
- Interactive websites to collect from and disseminate information to consumers, including information about complaints, complaint ratios and consumer rights with regard to policies and claims.
- Access to information sources should be user friendly.
- Counseling services to assist consumers, e.g., with health insurance purchases, claims, etc. where needed should be established.
- Consumers should have access to a national, publicly available database on complaints against companies/sellers, i.e., the NAIC database.
- To promote efficiency, centralized electronic filing and use of centralized filing data for information on rates for organizations making rate information available to consumers, e.g., help develop the information brokering business.
- Regulatory system should be subject to sunshine laws that require all regulatory actions to take place in public unless clearly warranted and specified criteria apply. Any insurer claim of trade secret status of data supplied to regulatory entity must be subject to judicial review with burden of proof on insurer.
- Strong conflict of interest, code of ethics and anti-revolving door statutes are essential to protect the public.
- Election of insurance commissioners must be accompanied by a prohibition against industry financial support in such elections.
- Adequate and enforceable standards for training and education of sellers should be in place.
- The regulatory role should in no way, directly or indirectly, be delegated to the industry or its organizations.
- The guaranty fund system should be prefunded, national fund that protects policyholders against loss due to insolvency. It is recognized that a phase-in program is essential to implement this recommendation.
- Solvency regulation/investment rules should promote a safe and sound insurance system and protect policyholder funds, e.g., rapid response to insolvency to protect against loss of assets/value.
- Laws and regulations should be up to date with and applicable to e-commerce.
- Antitrust laws should apply to the industry.
- A priority for insurance regulators should be to coordinate with other financial regulators to ensure consumer protection laws are in place and adequately enforced regardless of corporate structure or ownership of insurance entity. Insurance regulators should err on side of providing consumer protection even if regulatory jurisdiction is at issue. This should be stated mission/goal of recent changes brought about by GLB law.
- Obtain information/complaints about insurance sellers from other agencies and include in databases.
- A national system of “Consumer Alerts” should be established by the regulators, e.g., companies directed to inform consumers of significant trends of abuse such as race-based rates or life insurance churning.
- Market conduct exams should have standards that ensure compliance with consumer protection laws and be responsive to consumer complaints; exam standards should include agent licensing, training and sales/replacement activity; companies should be held responsible for training agents and monitoring agents with ultimate review/authority with regulator. Market conduct standards should be part of an accreditation process.

- The regulatory structure must ensure accountability to the public it serves. For example, if consumers in state X have been harmed by an entity that is regulated by state Y, consumers would not be able to hold their regulators/legislators accountable to their needs and interests. To help ensure accountability, a national consumer advocate office with the ability to represent consumers before each insurance department is needed when national approaches to insurance regulation or "one-stop" approval processes are implemented.
- Insurance regulator should have standards in place to ensure mergers and acquisitions by insurance companies of other insurers or financial firms, or changes in status of insurance companies (e.g., demutualization, non-profit to for-profit), meet the needs of consumers and communities.
- Penalties for violations must be updated to ensure they serve as incentives against violating consumer protections and should be indexed to inflation.

8. Consumers should be adequately represented in the regulatory process.

- Consumers should have representation before regulatory entities that is independent, external to regulatory structure and should be empowered to represent consumers before any administrative or legislative bodies. To the extent that there is national treatment of companies or "one-stop" (OS) approval, there must be a national consumer advocate's office created to represent the consumers of all states before the national treatment state, the OS state or any other approving entity.
- Insurance departments should support public counsel or other external, independent consumer representation mechanisms before legislative, regulatory and NAIC bodies.
- Regulatory entities should have well-established structure for ongoing dialogue with and meaningful input from consumers in the state, e.g., consumer advisory committee. This is particularly true to ensure needs of certain populations in state and needs of changing technology are met.