Statement of Jon Jensen
On Behalf of the
Independent Insurance Agents and Brokers of America

Before the

United States House of Representatives
Committee on Financial Services
Subcommittee on Housing and Insurance

At a Hearing Entitled:
"The Federal Insurance Office's
Report on Modernizing Insurance Regulation"

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Introduction and Overview

The Independent Insurance Agents & Brokers of America, (IIABA or the Big "I"), is grateful for the opportunity to submit testimony to the U.S. House of Representatives Subcommittee on Insurance and Housing regarding the "Federal Insurance Office's Report on Modernizing Insurance Regulation." The Big "I" is the nation's oldest and largest trade association of independent insurance agents and brokers, and we represent a nationwide network of more than a quarter million agents, brokers, and employees. IIABA represents independent insurance agents and brokers who present consumers with a choice of policy options from a variety of different insurance companies. These small, medium, and large businesses offer all lines of insurance – property/casualty, life, health, employee benefit plans, and retirement products. In fact, our members sell 80% of the commercial property/casualty market.

Over the last two years, the agent and broker community and other stakeholders in the insurance world have anxiously awaited the release of the Federal Insurance Office ("FIO")'s report on how insurance regulation in this country might be improved. FIO was charged with an unenviable assignment, and IIABA commends Director McRaith and his staff for producing a comprehensive, impressive, and largely balanced assessment of the insurance regulatory system. The extensive survey, which offers a detailed historical review of the industry in addition to its discussion of the current regulatory framework, is useful reading for anyone interested in the past, present, and future of insurance regulation.

The FIO report has generated well-deserved attention and analysis, and it is a thoughtful contribution to the enduring conversation and discourse concerning the future of insurance regulation. As with any report of this nature, interested parties and stakeholders have studied its findings and recommendations, carefully parsed its text, and have searched for particular passages that might be utilized to defend or advance their particular positions. This document provides an opportunity to reflect on the current state of insurance regulation and assess potential improvements.

The report contains over two dozen recommendations and identifies areas in need of reform, but nothing contained in the report causes IIABA to alter or question its fundamental and steadfast support for state insurance regulation. Our association has long supported state regulation of insurance, and the sensibility of that position has been reinforced and strengthened by the performance of that system in recent years. During a tumultuous period, state insurance regulators admirably and effectively ensured that insurers were solvent, that claims were paid, and that consumers were protected. State officials have decades of experience, outnumber their banking and securities counterparts, handle countless inquiries and questions from consumers, and understand the concerns and the often unique issues facing the citizens in their areas. State insurance regulation has a long and stable track record of accomplishment – especially in the areas of solvency regulation and consumer protection – and its benefits and merits have never been more apparent.

The recommendations offered in this report are, for the most part, modest in scope and suggest that the insurance regulatory system is functioning at a high level and does not require a significant overhaul or restructuring. IIABA agrees strongly with several of these recommendations (including FIO's call for the adoption of the much-discussed NARAB II producer licensing reform legislation) and is skeptical about others. Although my testimony addresses several of the specific recommendations contained in the report, we urge the members of this subcommittee and others not to focus too heavily or place too much emphasis on the itemized suggestions. While many of the individual recommendations are worthy of discussion and review, the more relevant and substantial elements of the report are the broader conclusions, observations, and themes that are identified. Let me highlight four such items:

- First, the report reminds us that insurance regulation, as with any system of regulatory oversight, is imperfect and can always be enhanced. State insurance regulation has a strong, successful, and unmatched record – especially in recent years – and has performed with particular distinction when compared with other financial sectors. The report serves as a reminder, however, that this successful system must continue to evolve and improve.

- Second, the report observes that the establishment of a full-blown federal regulatory framework or a dual state-federal system is not a prudent or viable option. Although some observers may have expected the Federal Insurance Office to have an institutional proclivity for such a recommendation, the report indicates instead that the debate over insurance

regulation should be reframed and focused on specific and targeted problems that may exist. Of course, the economic crisis highlighted and reinforced the pitfalls and serious deficiencies associated with creating an optional federal insurance regulatory system. When large financial services entities are permitted to select the regulator of their choice, they will select the path of least resistance and the system that best serves their business interests. That choice may not be – and is often not – what is in the best interest of the consumer, and our nation now has ample evidence of what can arise when regulatory arbitrage of this nature occurs.

- Third, the recommendations offered in the report are noticeably modest, and they affirm the relative health of state insurance regulation and indicate that sweeping and wholesale changes are unnecessary and unwarranted. The report recognizes that state officials have identified and are working to remedy certain flaws with the existing system, and many of the suggestions simply encourage states to continue their pursuit of existing efforts and note that FIO intends simply to monitor the progress of such work.

- Fourth, the report recommends the use of targeted and limited federal intervention to address problems that the states are unable to resolve on their own. The report notes that federal action of this kind should be limited to those instances where demonstrated deficiencies exist, where there is a national interest in addressing a particular problem, and where state officials are unable – as a result of practical hurdles or collective action challenges – to resolve the challenges themselves.

  The agent and broker community welcomes FIO's endorsement of this approach to reform. For more than a decade, IIABA has formally supported the use of targeted federal action to remedy and resolve clear flaws in the existing system without displacing or undermining the state-based framework. Limited federal legislation can effectively remedy identified deficiencies in the current system, establish greater interstate consistency in key areas, and preserve day-to-day regulation in the hands of state officials. This pragmatic and politically-feasible approach can be used on a compartmentalized issue-by-issue basis to address acknowledged problems and to establish uniformity and interstate consistency where necessary.

  Our experience in recent years suggests that there are certain problems with the state regulatory system that are resistant to reform via the traditional path of model laws and state-by-state legislative action. Targeted federal action can overcome the structural impediments, collective action challenges, and other practical and political barriers that have stalled previous reform efforts. There are a finite number of areas where uniformity and consistency are essential, and action can be taken to address these items without dismantling, replacing, or impairing the state-based system. State regulators do a tremendous job protecting consumers and ensuring the solvency of insurers, and nothing should be done to undermine or jeopardize their ability to do so on a prospective basis.

Topics of Interest

My remaining testimony focuses on the primary substantive topics discussed in sections of the report dedicated to marketplace issues and oversight.

Producer Licensing and NARAB II

The FIO report discusses the need for producer licensing reform at length, and this is the first subject discussed in the report's review of marketplace oversight issues. Director McRaith has been a strong supporter of reforming and simplifying the licensing process for producers since his days as the insurance regulator in Illinois, and we greatly acknowledge and appreciate the emphasis given to this issue in the report.

The report accurately describes the undue and unjustifiable burdens and costs that continue to exist in the licensing arena and notes, for example, that "inconsistencies and inefficiencies" and other problems persist despite the enactment of the original NARAB provisions as part of the Gramm-Leach-Bliley Act over 14 years ago. Many requirements encountered by multistate licensed producers are costly, burdensome and time consuming, and agents who operate in multiple jurisdictions face inconsistent standards and duplicative licensing processes. The report also addresses the impact on consumers and notes that inconsistent standards and duplicative licensing processes create "administrative and regulatory burdens without corresponding consumer benefit."

One of the problems today is that states too often ignore the principle of reciprocity and opt instead to reevaluate and second-guess the licensing decisions of a person's resident state, and the report accurately observes that many states that purport to have adopted the necessary reforms often fail to adhere to their own statutory requirements. Although the Gramm-Leach-Bliley Act and the state licensing laws clearly establish the limits of what may be required of a nonresident applicant – *a nonresident in good standing in his/her home state shall receive a license if the proper application or notice is submitted and the fees are paid* – some states continue to impose additional conditions and fail to respect the licensing determinations made by resident regulators. The imposition of these extra requirements (such as the submission of documents and other information that have already been provided to the home state regulator) makes it impossible for many insurance producers to quickly obtain and efficiently maintain the necessary licenses and violates the reciprocity standards established in federal and state law. In the words of the report, "[c]onsumers are detrimentally affected by the absence of uniformity and reciprocity."

Perhaps most notably, FIO proposes a specific solution to the challenges and problems that persist in the licensing arena – the enactment of the National Association of Registered Agents and Brokers Reform Act (or "NARAB II"). The NARAB II proposal would immediately establish the National Association of Registered Agents and Brokers ("NARAB") and provide agents and brokers with a long-awaited vehicle for obtaining the authority to operate on a multistate basis. It would eliminate barriers faced by agents who operate in multiple states, establish licensing reciprocity, and create a one-stop compliance mechanism. The bipartisan proposal benefits policyholders by increasing marketplace competition and consumer choice and by enabling insurance producers to more quickly and responsively serve the needs of consumers.

NARAB II ensures that any agent or broker who elects to become a member of NARAB will enjoy the benefits of true licensing reciprocity. In order to join NARAB, however, an insurance producer must be licensed in good standing in his/her home state, undergo a recent criminal

background check (long a priority of state insurance regulators), and satisfy the criteria established by NARAB. These criteria would include standards for personal qualifications, training, and experience, and – in order to discourage forum shopping and prevent a race to the bottom – the bill instructs the board to "consider the highest levels of insurance producer qualifications established under the licensing laws of the states."

NARAB's simple and limited mission would be to serve as a portal or central clearinghouse for insurance producers and agencies who seek the regulatory authority to operate in multiple states. The bill discretely utilizes targeted congressional action to produce efficiencies and is deferential to states' rights at the same time. NARAB II merely addresses marketplace entry and appropriately leaves regulatory authority in the hands of state officials.

The NARAB II proposal is a textbook example of how targeted action at the federal level can enhance and improve state insurance regulation. The proposal does nothing to limit or restrict the ability of state regulators to enforce state marketplace and consumer protection laws. State officials will continue to be responsible for regulating the conduct of producers and will, for example, investigate complaints and take enforcement and disciplinary action against any agent or broker who violates the law. In short, the NARAB II proposal would strengthen state insurance regulation, reduce unnecessary redundancies and regulatory costs, and enable the industry to more effectively serve the needs of insurance buyers – and it would achieve these results without displacing or adversely affecting state regulatory oversight.

IIABA is pleased that the NARAB II proposal continues its progress through the legislative process, and the agent and broker community is guardedly optimistic that this much-anticipated measure will be enacted into law in the near future. We greatly appreciate the Chairman and Representative David Scott's sponsorship of this bill and their leadership on this issue over the past several years. We thank the House for its overwhelming approval of this legislation last June when it passed by a vote of 397-6, and we are also pleased that the measure was approved by the Senate last week as part of its flood insurance bill. As the subcommittee and full committee craft flood insurance legislation for action by the House, we strongly urge you to include the NARAB II provisions in any proposal that is considered on the full floor.

Policy Form and Rate Regulation

The FIO report also discusses the need to improve the manner in which new insurance products are examined by regulators and introduced into the marketplace. IIABA agrees that action in this area is warranted and arguably overdue, and we support efforts that enable insurers and agents to be more responsive to the needs of consumers and commercial clients.

Insurance rates and policy forms are subject to some form of regulatory review in nearly every state, and the manner in which rates and forms are approved and regulated can differ dramatically from jurisdiction to jurisdiction and from one insurance line to the next. These requirements are significant because they not only affect the products and prices that can be implemented, but also the timing of product and rate changes in a competitive and dynamic marketplace. The current system is too often inefficient, paper-intensive, time-consuming, and duplicative, and changes and improvements are needed in order to encourage innovation and maximize consumer choice.

The report notes that product approval reforms are especially warranted in the commercial lines marketplace, and IIABA agrees while seeing differences between the need for product review of commercial forms versus personal forms. The paper notes that inconsistent and lengthy

approval processes limit the ability of the marketplace to meet the needs of business clients and drive many of these policyholders to surplus lines or self-insurance alternatives. States could improve the process by clearly articulating the standards that apply to the consideration of new policy forms and eliminate any so-called "desk drawer rules" that are not rooted in statute or properly promulgated regulations. The existing system could also be enhanced by requiring state regulators to complete their reviews of newly filed forms within a certain window of time, allowing forms to be deemed approved if no action is taken, and mandating that officials disclose the statutory or regulatory basis for any disapprovals of filings.

The report also addresses rate regulation and nudges states to consider alternative regulatory approaches that rely more heavily on competitive forces. The paper cites the empirical research that has found that rate regulation can often inadvertently result in fewer insurance carrier options, higher prices, and a larger market share for residual market mechanisms. States should instead rely on the forces of competition to establish insurance rates, eliminate the ability of regulators to establish prices, and continue to ensure that all insurance rates are neither discriminatory nor inadequate. This model for regulation has worked well in Illinois for years, and a growing number of other jurisdictions have started to examine and implement similar approaches.

Risk Classification

The FIO report also addresses the issue of risk classification and recommends that states develop standards governing the use of data in personal lines pricing.

IIABA supports the use of underwriting and rating tools that produce enhanced competition and the fair and accurate pricing of risk, and we recognize that consumer credit information and similar factors are powerfully predictive tools when used appropriately. The effectiveness of utilizing credit information has become increasingly apparent and widely accepted, even to those who were previously critical of its use, and agents can attest to the fact that it enables insurers to more accurately predict losses and the severity of future claims. The increased use of credit-based insurance scores has enhanced competition as companies have become more confident with the accuracy of their underwriting and rating tools, and, as a result, many agents are now able to find coverage (and prices) for clients in instances where such options were unavailable in the past.

At the same time, however, insurance scores must be used in sensible, responsible, and consumer-friendly ways – and IIABA has supported and helped implement a meaningful series of consumer protections at the state level. Most states have now enacted restrictions that limit when and how credit information and scores may be used in the insurance arena. These safeguards, for example, require additional underwriting factors to be taken into consideration when evaluating whether to underwrite, deny, cancel, or non-renew a policy; protect those with little or no credit history; impose helpful disclosure requirements; restrict the use of certain types of factors or credit information; and provide regulators with access to scoring methodologies and models.

The FIO report is vague about the types of standards that states might actually consider, but it is important to recognize that state officials have already been active in this arena. State policymakers in most jurisdictions have enacted comprehensive legislation that strikes the appropriate balance between the concerns of consumers and the needs of the marketplace. Insurance agents and brokers believe credit-based insurance scores are an effective,

objectively verified, and fair risk measurement tool, and IIABA opposes efforts to ban the use of this information or unnecessarily restrict its use.

Surplus Lines Regulation

The report also indicates that the Federal Insurance Office will continue to monitor state implementation of the Nonadmitted and Reinsurance Reform Act ("NRRA") provisions contained in the Dodd-Frank Act. The NRRA surplus lines reforms were supported by IIABA, and they offer another example of how targeted federal action can be utilized to improve insurance regulation without displacing, duplicating, or adversely affecting the existing state-based system.

The surplus lines reforms are designed to eliminate the unnecessary duplication and redundancy that historically existed in this arena by embracing a single state regulatory approach. The law requires jurisdictions to respect the requirements and conclusions of the insured's home state and specifically provides that "the placement of nonadmitted insurance shall be subject to the statutory and regulatory requirements solely of the insured's home state." The net effect of these provisions is that only the surplus lines licensing, diligent search, disclosure, and all similar placement requirements of the home state are to apply in any particular transaction. The law also includes a clear preemption provision stating that "any law, regulation, provision, or other action of any state that applies or purports to apply to nonadmitted insurance sold to, solicited by, or negotiated with an insured whose home state is another state shall be preempted with respect to such application."

The implementation of a single state-home state regulatory system and the enactment of other national surplus lines standards have been beneficial to many agents and brokers active in the nonadmitted insurance marketplace. IIABA remains concerned and vigilant, however, about the possibility of states circumventing the law and imposing state requirements that are inconsistent with the NRRA. Further action may indeed be warranted if states violate the clear and narrow mandates of this law.

Conclusion

The Big "I" appreciates today's hearing on "The Federal Insurance Office's Report on Modernizing Insurance Regulation." We thank the subcommittee for its efforts – past and present – to implement tangible and effective marketplace improvements, and we look forward to a continued discussion regarding the issues addressed in my testimony.

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Education

- Graduate of Appalachian State University's Insurance Executive Program.

Experience

- President of Correll Insurance Group – An independent insurance agency with 18 locations in South and North Carolina and over 175 associates.
- Board Member and State Director for the Independent Insurance Agents & Brokers of South Carolina.
- National Government Affairs Committee Chairman for the Independent Insurance Agents (IIABA or Big "I") of America.
- Board of Trustees member of Limestone College in Gaffney, SC.
- Cancer Division Chairman and Board of Trustees member of the Spartanburg Regional Hospital System Foundation.