ISSUE BRIEF

NAIC
NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

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Oppose Risk Retention Group Expansion

- *The NAIC opposes legislation that would expand the scope of the Liability Risk Retention Act of 1986 (LRRA) to allow Risk Retention Groups (RRGs) to write commercial property insurance for non-profits.*
- *The limited oversight of RRGs due to the LRRA's preemptive regulatory framework, coupled with the increased risk of RRG insolvencies and that potential danger to the state-run guaranty fund protection, could expose nonprofit organizations and those who rely upon them to unnecessary risks.*
- *State insurance regulators focus on protecting insurance consumers and ensuring competitive and stable insurance markets. Unlike the market conditions that led to the LRRA, there is no evidence of a crisis in the commercial property insurance market, for non-profits or otherwise, that would merit preemption of state insurance regulatory laws that are designed to protect policyholders.*

Background

During the 1980s, the availability of commercial liability insurance became severely restricted, much of which was attributable to the expansion of tort doctrines for insurer liability. Premiums for general liability more than tripled over a three-year period. To address this issue Congress passed the LRRA, which allowed RRGs to write commercial liability insurance and limited regulatory authority of state insurance regulators. To quickly address the lack of commercial liability coverage, RRGs were afforded different regulatory and financial solvency requirements. This market issue in the commercial liability market no longer exists today and does not exist in the commercial property space.

RRGs are regulated almost exclusively by a single domiciliary state regulator and even though they may operate in other states, non-domiciliary state regulatory authority over these entities is severely curtailed. By comparison, traditional admitted insurers must receive a license and submit to regulation from every state where they write business. These limitations are significant because it means RRG policyholders in non-domiciliary states do not get the benefits of the full panoply of regulatory protections that the state insurance system normally provides, and the RRG is not subject to the more robust oversight that multiple sets of eyes can offer. The LRRA also currently prohibits RRGS from participating in state guaranty funds, which servs as a backstop and pay claims to policyholders in the event of an insurer failure. RRGs have historically had a higher rate of insolvencies when compared to admitted insurers and allowing them to participate in the state guaranty fund without being fully regulated would subject the guaranty funds to a greater risk.

The NAIC opposes legislation that would allow RRGs that provide coverage for non-profits to write property coverage as there is no crisis in commercial property insurance availability that would warrant preempting policyholder protections. Recent experience with natural catastrophes across the country has only reinforced the need for strong solvency oversight of insurers writing such coverage.

Key Points

- ✓ The current regulatory framework for financial oversight of RRGs was designed with the more limited purpose of promoting the availability of liability coverage not for protecting policyholders of property insurance. The nature of this framework could expose nonprofit organizations and those who rely upon them to unnecessary risks.
- ✓ State insurance regulators encourage any nonprofit policyholders that have difficulty obtaining property coverage to contact them so they can seek to address such issues appropriately.

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