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VIA E-MAIL AND FACSIMILE

July 22, 2008

The Honorable Paul E. Kanjorski
Chairman, Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises
House Financial Services Committee
U.S. House of Representatives
2188 Rayburn House Office Building
Washington DC 20515-3811

Re: H.R. 5840 – Insurance Information Act of 2008

Dear Congressman Kanjorski:

We are writing to express our strong concerns about H.R. 5840 (“The Insurance Information Act of 2008”). Thank you for your leadership on this bill and your interest in narrowing the scope of preemption.

Despite the improvements that have been made, H.R. 5840 as currently drafted [July 7 Manager’s Amendment with two technical revisions adopted in the July 9 markup] could fundamentally erode protections currently provided by state insurance regulation.

The Office of Insurance Information (OII), which would be established by the bill, and the mechanism for preemption of state laws under H.R. 5840, closely track a concept outlined in *The Department of the Treasury Blueprint for a Modernized Financial Regulatory Structure*. The *Blueprint* states:

Treasury recommends establishing an optional federal charter (“OFC”) for insurers.... Treasury recommends that Congress establish an Office of Insurance Oversight (“OIO”) within Treasury.... Once Congress passes significant insurance regulatory reform, the OIO could be incorporated into the OFC framework.” (*Blueprint* page 16)

Similarly, at the markup session, comments were made by some Members supporting the OII as a first step toward a federal charter. Whether the office is called “Oversight” or “Information” becomes less important given the new office’s broad authority over international agreements and preemption issues. For over 150 years, states have been the primary regulators of insurance, protecting consumers, encouraging private market competition, and helping to ensure that affordable and accessible insurance products are available. These steps to federalize insurance regulation – in other words to deregulate – will have an adverse impact on consumers of insurance and the private market.



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In addition to our concerns about OII being the first step to federal deregulation of insurance, we believe that H.R. 5840 could significantly hamper state insurance regulators' ability to continue to protect its insurance consumers and private markets.

H.R. 5840 would establish a new federal bureaucracy (OII) and give one person the power to invalidate state insurance laws that are perceived as "inconsistent with" international agreements. These laws would not be limited to international affairs, but could include long-established state insurance laws regulating purely domestic markets, such as licensing laws or laws requiring the use of U.S. statutory accounting principles. Any "international agreement" with a foreign government or regulatory entity (perhaps even an informal memorandum of understanding with a private self-regulatory entity) could be used by this federal employee as the rationale for an action to preempt state-based standards. The same individual could make an agreement with a foreign entity and give that agreement the force of law, overturning the actions of state legislatures. All of this would be done without any of the protections provided by the U.S. Constitution when international treaties are negotiated and Congress preempts state law. Under the draft bill, even a treaty that has been submitted for ratification and defeated could be considered an "agreement" with preemptive force.

Another fundamental problem is a lack of any accountable, transparent process for arriving at agreements that would have preemptive effect. The bill would allow anyone to engage in secret back-room discussions on behalf of the United States. The resulting "agreement," with no independent legal status of its own, could then be used by the OII as a basis for overturning settled state laws without ever having been exposed to public scrutiny, with no notice and opportunity for feedback by experts and affected parties, and no constitutionally accountable ratification process.

Furthermore, H.R. 5840 would have an unintended adverse impact, encouraging U.S. based insurers to avoid strong state-based regulation by setting up offshore affiliates in a foreign country whose insurers are granted exemption from U.S. state insurance laws by OII. This could inadvertently encourage the entire market, both foreign and domestic, to join in a race to the bottom.

We have strong concerns about this type of law making and its potential adverse impact on consumers of insurance. Thank you for your consideration. Mila Kofman may be reached at 207-624-8550. Bob Wake, Bureau of Insurance Legislative Counsel, may be reached at 207-624-8430. Andrew Black, Assistant Attorney General, may be reached at 207-626-8835.

Very truly yours,



MILA KOFMAN

Superintendent of Insurance

Sincerely,



G. STEVEN ROWE

Attorney General

Cc: Congressman Tom Allen, Congressman Michael Michaud, Speaker Nancy Pelosi, Chairman Barney Frank, Senator Olympia J. Snowe, Senator Susan M. Collins