



REINSURANCE
ASSOCIATION
OF AMERICA

STATEMENT

TESTIMONY

OF

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**H.R. 5840, THE INSURANCE INFORMATION
ACT OF 2008**

BEFORE

**FINANCIAL SERVICES SUBCOMMITTEE
ON
CAPITAL MARKETS, INSURANCE AND
GOVERNMENT SPONSORED ENTERPRISES**

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My name is Tracey Laws and I am Senior Vice President and General Counsel of the Reinsurance Association of America (RAA). The RAA is a national trade association representing property and casualty companies that specialize in assuming reinsurance. The RAA membership is diverse, including large and small, broker and direct, US companies and subsidiaries of foreign companies. RAA members are licensed, authorized or accredited in all US jurisdictions. I am pleased to appear before you today to provide the RAA's comments on H.R. 5840, the Insurance Information Act. By introducing H.R. 5840, Chairman Kanjorski has thoughtfully laid the foundation to ensure that the Federal government has: 1) an appropriate understanding of the complexities of insurance and reinsurance issues and how policy decisions may affect those markets and 2) the authority to establish international insurance policy. The RAA supports the spirit and purpose of this legislation and we applaud Chairman Kanjorski and the other cosponsors for their leadership on insurance regulatory reform issues. My comments today will focus on H.R. 5840's potential benefits to the reinsurance industry and the RAA's suggested modifications to the legislation, which we believe are necessary for the bill to achieve its stated goals.

BRIEF BACKGROUND ON REINSURANCE

Reinsurance is commonly referred to as insurance for insurance companies. The US is the largest consumer of property and casualty insurance in the world. Reinsurance plays a critical role in maintaining the financial health of the insurance marketplace and ensuring the availability of property/casualty insurance for US citizens and businesses. One of the most important

purposes of reinsurance is to protect insurers from catastrophic losses resulting from various perils, including hurricanes, earthquakes, fire and floods. To that end, reinsurers have assisted in the recovery after virtually every major US catastrophe over the past century. By way of example, 60% of the losses related to the events of September 11 were absorbed by the reinsurance industry and 61% of the 2005 hurricane losses were ultimately borne by reinsurers.

Reinsurance is a global business. This can be best illustrated by the number of reinsurers assuming risk from US cedents. Encouraging the participation of reinsurers worldwide is essential to providing much needed capacity in the US for both property and casualty risks. In 2007, more than 2,300 foreign reinsurers assumed business from US ceding insurers. Those 2,300 reinsurers were domiciled in more than 75 foreign jurisdictions.¹ Although the majority of US premiums ceded offshore is assumed by reinsurers domiciled in a dozen countries, the entire market is required to bring much needed capital and capacity to support the extraordinary risk exposure in the US and to spread that risk throughout the world. Foreign reinsurers now account for 56% of the US unaffiliated premium ceded to professional reinsurers. That figure has grown steadily from 38% in 1997.

Reinsurance is currently regulated on a multi-state basis which is cumbersome and less efficient for a global marketplace. Complying with fifty states' often inconsistent and conflicting laws unnecessarily makes compliance burdensome and expensive for this global business. The current state-based system is primarily focused on regulating market conduct, contract terms and rates and protecting consumers. Significantly, none of these objectives apply to reinsurance business-to-business transactions. Rather, reinsurance regulation should focus on ensuring the reinsurer's financial solvency so that it can meet its obligations to its ceding insurers.

¹ Reinsurance Association of America (RAA), Offshore Reinsurance in the US Market 2007 Data (2008).

The RAA supports a reinsurance regulatory system that creates a single national regulator with a single set of rules that will focus on efficient and effective solvency regulation. We also support a process for the national regulator to vet the equivalence of and to recognize on a reciprocal basis non-US regulatory regimes. This process would facilitate cross-border transactions and address the collateral issue.

Because of the global nature of our business, and the important role that reinsurers play in catastrophic events, the RAA wholeheartedly agrees with Chairman Kanjorski's statement that an Office of Insurance Information ("OII" or "Office") is necessary to assist Congress and the Federal government in making better decisions regarding international and national insurance policy and in enforcing international agreements uniformly across the US.

THE OFFICE OF INSURANCE INFORMATION

Advising on Domestic and International Policy Issues and Establishing Policy on International Insurance Issues

The RAA supports the legislation's goal to provide authority for the Treasury Department to: 1) collect and analyze data on insurance; 2) advise the Secretary of Treasury on major domestic and international policy issues; and 3) coordinate Federal efforts and establish policy on international insurance issues.

The RAA appreciates and strongly supports the legislation's authorization of the Director of the OII to advise the Secretary of Treasury on major domestic and international insurance policy issues, including reinsurance requirements. The global reinsurance industry plays a major role in the stability of the US insurance marketplace as well as in the economic recovery of the

US following major natural and man-made disasters. The Federal government has a strong interest in understanding this important market as it responds to these crises. The creation of the OII will fill the current lack of a lead Federal entity that understands how decisions made by the Federal government, including Congress, can impact - both positively and negatively - the insurance industry. The OII would have the benefit of the NAIC's information and experience but would be empowered to conduct its own analysis and provide advice based on a broader perspective that is not driven by individual state interests.

The RAA also believes it is critical that the Treasury Department be empowered to coordinate Federal efforts and establish Federal policy on international issues. The recent US Treasury's Blueprint for Financial Regulatory Reform ("the Treasury Blueprint") noted that the US state-based insurance regulatory system creates increasing tensions in this global marketplace, both in the ability of US-based firms to compete abroad and in the allowance of greater participation of foreign firms in the US market. Foreign government officials have continued to raise issues associated with having at least 50 different US insurance regulators, which makes coordination on international insurance issues difficult for foreign regulators and companies.

The Treasury Blueprint also noted that, while the NAIC attempts to facilitate communications among the states on international regulatory issues, it is not a regulator. The Blueprint further noted that because of the NAIC's status as a non-governmental coordinating body and the inherent patchwork nature of the state-based system, it will be increasingly more difficult for the US to speak effectively with one voice on international regulatory issues.

The time has already arrived where this lack of a single voice is adversely impacting US reinsurers. The Treasury Blueprint points out that the interaction between the US and its foreign

counterparts on issues like the European Union's Solvency II effort will likely impact not only the ability of US firms to conduct business abroad, but also the flow of capital to the US. For US reinsurers, Solvency II will set forth a process for determining which third countries are "equivalent" for purposes of doing business in the European Union. Although this issue is still being discussed, it is our understanding that the European Parliament recently obtained a legal opinion that stated that the European Commission cannot grant equivalence to a US state under Solvency II. The possibility that the entire 50-state system in the US will be deemed "equivalent" appears questionable. Thus, without Federal involvement by a knowledgeable entity tasked with responsibility for international policy issues, the US reinsurance industry will continue to be disadvantaged in these equivalence discussions.

An informed Federal voice with the authority to establish Federal policy on international issues is critical not only to US reinsurers, who do business globally and spread risk around the world, but also to foreign reinsurers, who play an important role in assuming risk in the US marketplace. The fragmented US regulatory system is an anomaly in the global insurance regulatory world. As the rest of the world continues to work towards global regulatory harmonization and international standards, the US is disadvantaged by the lack of a Federal entity with authority to make decisions for the country and to negotiate international insurance agreements. As part of its authority to establish Federal international policy, we would suggest that the Director establish a process for vetting the equivalence and recognition on a reciprocal basis of non-US regulatory regimes. This process would assist non-US reinsurers by facilitating cross-border transactions through international supervisory arrangements thereby addressing the collateral issue. We would also urge that the legislation be amended to empower the Director to negotiate and enter into these international supervisory authority arrangements.

Preemption of State Insurance Measure

The RAA also strongly supports the legislation's fourth goal, which is to provide authority for the Treasury Department to ensure that State insurance measures are consistent with Federal policy, including agreements entered into by the US with a foreign government, authority or regulatory entity. Because of the fragmented nature of the current 50-state regulatory system, it is critical that the Treasury Department be authorized to ensure that the international policy it creates, including those policies that are reflected in international agreements, are uniformly respected throughout the states by preempting any inconsistent State insurance measures. To do otherwise would perpetuate the current patchwork system of regulations and undermine the ability of the US to effectively participate in the international arena, including the ability to reach international agreements on insurance policy issues. Although we have concerns about the current preemption language in the legislation, if these issues are addressed, the preemption language could be a significant step forward in creating a more efficient and effective regulatory system in the US and enhancing the its dealings with foreign governments and regulatory entities.

I would like to focus on the RAA's two most significant concerns with the current draft of the legislation: the scope and process provisions of the preemption section.

Scope of Preempting State Insurance Measure

First, the RAA urges the Subcommittee to amend the legislation to provide the preemptive powers necessary to fully effectuate the authority given to the OII. Sections 313(c)(B) and (C) provide that the Office shall have the authority to "establish Federal policy on international matters" and to "determine in accordance with Subsection (e) whether State insurance measures are consistent with such policy, including agreements entered into by the

US” with a foreign government, authority, or regulatory entity. However, Subsection (e)(1) only allows for preemption of a State insurance measure if it is deemed to be inconsistent with agreements relating to Federal policy on international insurance matters as established by the OII or as entered into by the US with a foreign government, authority or regulatory entity. We urge this Committee to make the preemption standard in Subsection (e)(1) consistent with the broader authority conferred on the Office in Subsection (c) and allow preemption of State insurance measures that are inconsistent with any “Federal policy on international matters,” not just those that are embodied in international agreements. To do otherwise leaves a gap and would allow States to have laws, regulations and policies that conflict with Federal policy so long as the Federal policy is not embodied in an international agreement.

Second, and more significantly, the RAA believes there may be serious unintended consequences resulting from the language in Subsection 313(e)(2). That Subsection provides that a State insurance measure shall be preempted “only to the extent that the measure treats a non-United States insurer domiciled in a jurisdiction that is subject to an agreement referred to in this subsection less favorably than it treats a United States insurer.” A major purpose of this legislation is to allow the Federal government to establish Federal policy on international insurance matters. However, the non-discriminatory language in this Subsection takes away the Federal government’s control over establishing federal policy on international issues. By providing that State insurance measures are only preempted “to the extent that the measure treats a non-United States insurer less favorably than it treats a US insurer,” the bar is set for what states can do: i.e., so long as US insurers are treated the same as non-US insurers, there is no preemption. This inappropriately transfers the power to the states to decide what will be acceptable.

By way of example, collateral reduction is a controversial issue among various industry participants, including a lack of unanimity among state regulators on this issue. Certain insurance industry groups have argued that rather than have any collateral reduction for non-US reinsurers, they would prefer to also impose collateral on US licensed entities. Under the current draft of the legislation, such a state insurance measure would not be preempted so long as collateral requirements were imposed equally on both US and non-US entities. Imposing collateral on US reinsurers would be a huge step backwards and would be enormously inconsistent with the goals of regulatory reform set forth in the Treasury Blueprint and in international insurance regulatory standards.

Process for Preempting State Law

The RAA agrees that the legislation should set forth a process for determining whether a State insurance measure is inconsistent and should be preempted. However, the process set forth in Section 313(e)(3)(B) is unnecessarily extended, particularly given the fact that it does not even guarantee that preemption will occur, even after a determination by the Director that an inconsistency exists. The legislation's preemption process includes public notice of a potential inconsistency or preemption; a 30-day comment period; public notice (and direct notice to the State) of the Director's determination of an inconsistency; a reasonable period of time before the preemption becomes effective; and a final public notice that such inconsistency still exists and that preemption will occur. Even after this lengthy process is complete, a state may still seek to have the preemption stayed if the Secretary of Treasury determines that: (1) maintaining the State insurance measure is necessary for prudential reasons; or (2) preemption will result in any need to establish a supervisory or regulatory authority of the Office of the Secretary over US

insurers; or (3) preemption will result in a gap or void in financial or market conduct regulation of US insurers.

These are extremely broad standards that inappropriately allow the state to have a “second bite at the apple” to avoid preemption after a decision making process that provides ample opportunity for notice, comment and appeal. We suggest that the stay procedure provision be deleted as it is unnecessary; in the alternative, the process could provide for a stay pending any appeal. We also believe that the broad standards set forth in the stay provision are the types of factors that are more appropriately considered earlier in the process during the Director’s decision-making process as to whether an inconsistent State insurance measure should be preempted.

CONCLUSION

The RAA thanks Chairman Kanjorski and the Subcommittee for this opportunity to comment on reinsurance regulation and H.R. 5840. We are hopeful that the RAA’s suggested modifications will be considered prior to a mark-up of the legislation. We look forward to working with all Members of the House Financial Services Committee as the Committee considers this most important issue and this legislation moves forward.