NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

December 11, 2022

The Honorable Sherrod Brown
Chairman
Committee on Banking,
Housing, and Urban Affairs
U.S. Senate
Washington, DC 20510

The Honorable Patrick Toomey
Ranking Member
Committee on Banking,
Housing, and Urban Affairs
U.S. Senate
Washington, DC 20510

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Re: The Nonprofit Property Protection Act

Dear Chairman Brown, Chairwoman Waters, Ranking Member Toomey, Ranking Member McHenry:

On behalf of the nation's state insurance regulators, we write in opposition to the Nonprofit Property Protection Act being included in any year-end spending bill.

This draft legislation would expand the scope of the Liability Risk Retention Act of 1986 (LRRA) to allow certain Risk Retention Groups (RRGs) that write liability insurance for non-profits to write commercial property insurance coverage. By way of background, during the 1980s, the availability of commercial liability insurance became severely restricted. The LRRA addressed this availability crisis by preempting the states and relaxing regulatory standards that otherwise would provide important protections to commercial insureds. This bill would undermine critical insurance consumer protections for the most vulnerable of the commercial insured.

As we noted in our testimony before the U.S. Senate Banking Committee in 2022 and the U.S. House Financial Services' Subcommittee on Housing, Community Development, and Insurance in 2020[1], 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, a traditional admitted insurer must receive a license and submit to regulation from every state where it writes business to ensure the policyholders of that state are protected. This coordinated multi-state approach limits the potential regulatory capture and a race to the bottom – a feature now missing

[1]https://content.naic.org/sites/default/files/inline-files/Written%20Testimony%20Director%20Lindley-Myers%201.29.20%20Examining%20Availability%20of%20Insurance%20for%20Nonprofits.pdf

from RRG oversight due to federal preemption. These limitations are significant because 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.

While the passage of the LRRA may have been viewed as appropriate in the 1980s to address a widespread availability crisis in the liability insurance market, there does not appear to be such a crisis in the commercial property insurance market. However, in light of the concerns raised by certain members of Congress and market participants, we will examine the issue further. Our NAIC Property and Casualty Insurance Committee has adopted a priority objective in 2023 to "**Study and report on the availability and affordability of liability and property coverage for non-profit organizations**.[2]" We will keep your committees apprised as we continue our exploration of this issue to ensure non-profit policyholders have access to necessary insurance products.

Traditional admitted carriers do provide coverage to nonprofits, albeit several offer it in the form of a full businessowner's policy that contains both liability and property coverages. Also, if there are limited options for a specific policyholder in the admitted market, policyholders have access to the surplus lines market and the residual market. While the draft bill attempts to address this concern by only allowing RRGs to write commercial property coverage if the coverage is unavailable in the state, the criteria to demonstrate availability is exceedingly narrow and is not a true measure. The criteria are illusory, specifically designed to accomplish the real intent of the legislation, which is to allow RRGs to write such coverage wherever and whenever they want, with more limited regulatory oversight.

Further, the legislation would remove the prohibition barring RRGs from participating in the state guaranty funds, which are similar in concept to the FDIC's deposit insurance fund and serve 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 funds without being fully regulated would subject the guaranty funds, other insurers, and policyholders to greater risks.

While we recognize that the bill requires RRGs seeking to sell coverage to nonprofits be subject to some additional solvency protections, the additional protections contained within the legislation fall short of the breadth and scope of the type of regulation that the admitted market is subject to. Notwithstanding these provisions, the NAIC remains concerned that the legislation could expose nonprofit organizations and those who rely upon them to unnecessary risks. We encourage RRGs interested in expanding into writing commercial property coverage to explore converting to an admitted carrier and be subject to the same regulatory requirements on a level playing field as traditional admitted property and casualty insurers.

In conclusion, we believe this legislation preempts critical regulatory protections and should not be included in any omnibus bill. We would encourage nonprofit policyholders that have difficulties with obtaining property coverage to work their state's insurance department so we can seek to address such issues through appropriately tailored state-based regulatory solutions as we do with all other lines of insurance. Thank you for your consideration of the state insurance regulatory perspective.

[2] https://content.naic.org/cmte_c.htm

Respectfully,

Dean L. Cameron
NAIC President
Director
Idaho Department of Insurance

Chlora Lindley-Myers
NAIC President-Elect
Director
Missouri Department of Commerce
and Insurance

Andrew N. Mais (He/Him/His)
NAIC Vice President
Commissioner
Connecticut Insurance Department

Jon Godfread
NAIC Secretary-Treasurer
Commissioner
North Dakota Insurance Department

Michael F. Consedine
Chief Executive Officer
National Association of Insurance Commissioners