“Holding the Biden Administration Accountable for Wasteful Spending and Regulatory Overreach”

House Financial Services Committee

Subcommittee on Oversight and Investigations

United States House of Representatives

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Founded in 1931, PIA is a national trade association that represents independent insurance agencies and their employees. Our members sell and service all kinds of insurance, but they specialize mostly in property & casualty insurance. They represent independent insurance agents in all 50 states, Puerto Rico, and the District of Columbia.

Background

The National Association of Professional Insurance Agents (PIA) supports our successful system of state-based insurance regulation because it has effectively protected consumers for more than a century and has created and cultivated a competitive and diverse U.S. insurance market that has served policyholders’ needs for over 150 years.

PIA believes the federal government should have a minimal role in the regulation of the insurance industry, given the effectiveness of our state insurance regulatory system. The existence of the Federal Insurance Office (FIO) threatens the primacy of state regulation, and the FIO has recently attempted to increase its power.

Instead of being regulated by a federal bureaucracy, the insurance industry is regulated by state insurance departments, each of which oversees licensed insurance professionals, including independent agents, in each state. This structure helps to ensure consumer protection by allowing state insurance regulatory authorities to design and refine their oversight system so that it is tailored to meet the specific needs of that state’s policyholders. This system has prevented major financial disasters; indeed, according to a report issued by the Government Accountability Office (GAO) in June 2013, the decentralization of our state-based insurance regulatory system helped to mitigate damage to the insurance industry during the 2008 financial crisis.

Insurance has been regulated by state insurance commissioners since 1945 thanks to Congress’s passage of the McCarran-Ferguson Act, which exempted the business of insurance from most federal regulation. At the time, Congress opted to delegate the power to regulate insurance entities to the states, and, since then, it has legislatively reinforced that position repeatedly.

While this delegation of Congressional authority was codified by McCarran-Ferguson more than 75 years ago, it has been in place for over a century. During that time, it has worked well for insurance regulators, consumers, and members of the industry because, comparatively, state insurance regulators have greater familiarity with and flexibility to address their residents' specific geographic and economic needs in the context of insurance.

PIA strongly supports our thriving, state-based insurance regulatory system and opposes federal law and regulatory action that encroach on and thus threaten it. The existence of the FIO is an unnecessary threat to the state insurance regulatory system.

Federal Insurance Office

In 2010, in a misguided response to the 2008-2009 financial crisis, advocates of federal insurance regulation created the FIO as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (commonly referred to as Dodd-Frank). PIA opposed the creation of the FIO from its inception; its very existence threatens the primacy of state-based insurance regulation.

Many of the FIO's duties are examples of federal overreach and are duplicative of activities that are already being done by the states within our existing regulatory system. Additionally, like most federal offices do, the FIO has consistently expanded its power since its creation. In the decade since Dodd-Frank was passed, the FIO has sought to federally regulate mortgage insurance; to be included in international supervisory colleges; and to promulgate uniform national standards for state guaranty associations. Every one of these acts is well outside the FIO's mandate. In addition, over the years, it has been identified as a potential overseer of the National Association of Registered Agents and Brokers (NARAB).

In November 2016, PIA became the first national insurance association to publicly call for the repeal of the FIO and we support the FIO Elimination Act, introduced last Congress by Representatives Ben Cline (R-VA) and Tom Tiffany (R-WI). PIA will continue to work to have this legislation reintroduced.

Recent Overreach by the FIO

Climate Risk Activity

The Biden administration's regulatory overreach was well demonstrated by its May 2021 Executive Order (EO) on Climate-Related Financial Risk, which also exceeded the mandate of the FIO. The EO directed the Treasury Secretary to task the FIO with, among other assignments, assessing "climate-related issues or gaps in the supervision and regulation of insurers," even though the insurance industry has enjoyed a long and successful history of being regulated by the states rather than the federal government. In response, the Treasury Secretary issued a Request for Information on the Insurance Sector and Climate-Related Financial Risks. In response, PIA registered its objections to the existence of the FIO and this broadening in scope of its mandate. Specifically, PIA said that any necessary climate assessment should be conducted by state insurance regulators and not by the federal government, and PIA stands by that position today.

More recently, the Treasury Secretary announced its intent to pursue a data collection on climate-related financial risks and solicited comments on the project. The data collection would request information from more than 200 property and casualty (P&C) insurers across 34 states regarding each insurer's current and historical homeowners' insurance underwriting data. FIO claimed at the time that its proposed data collection would help it assess climate-related risk exposures and their effects on the availability of insurance for policyholders, including whether climate change may pose a risk of disruption of private insurance coverage, specifically in regions of the country that are particularly vulnerable to severe weather-related loss events.

The insurance industry has numerous venues in which states discuss and share information on best practices, so the FIO, and the federal government more generally, are not needed as such venues. This data collection will only serve to further improperly expand the FIO portfolio.

PIA registered its objections to this proposed data collection with greater specificity, noting that it could be unnecessarily duplicative of state-based regulatory data collections and would impose an unnecessary burden on proposed respondents.

The proposed climate-related data collection is an example of FIO's improper and ongoing overreach into the insurance sector.

To the degree state insurance regulators have deemed climate-related risk examinations necessary, they have embarked on them persistently and without hesitation via, among other organizations, the National Association of Insurance Commissioners (NAIC).[1] The NAIC "provides expertise, data, and analysis for insurance commissioners to effectively regulate the industry and protect consumers. … The [NAIC] is governed by the chief insurance regulators from the 50 states, the District of Columbia, and five U.S. territories."[2] In collaboration with 50 state insurance departments and their 5 U.S. territorial counterparts, the NAIC established a climate-focused working group more than ten years ago, and that group evolved into the NAIC's current Climate and Resiliency Task Force, which coordinates all NAIC engagement on climate related risk and resiliency issues.[3]

Troubling Report Language

During the Fiscal Year 2023 (FY23) appropriations process, draft report language was considered for inclusion with the House Financial Services and General Government appropriations bill containing several troubling directives to the FIO. Specifically, the draft committee report language expressed approval of the FIO's recent investigation of climate-related insurance risk and noted that its forthcoming report is expected to include a study of the

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[1] The NAIC provides a venue in which state insurance regulators routinely collaborate to develop best practices and model laws, regulations, and guidelines to serve the needs of the state-based insurance regulatory system. The state-based insurance regulatory system is robust and comprehensive, and it often identifies and addresses emerging issues ahead of Congress and federal regulators.

[2] https://content.naic.org/sites/default/files/government-affairs-letter-fio-climate-related-financial-risk-datacomments-221122.pdf. "NAIC Climate-Related Financial Risk Data Collection Comments," November 22, 2022.

[3] Id.

effect of wildfire risk on the insurance sector and how to ensure the continued affordability and availability of home, business, and commercial property insurance against wildfire losses.

The draft committee report language would have also directed the FIO to gather data on property damage exclusions in homeowners' and renters' insurance policies covering both property damage and liability across the industry. The draft report language would also have requested that the FIO investigate the types of property damage that are excluded from coverage; whether insurance companies offer "riders," or supplemental insurance policies, to cover such exclusions; and whether and at what rates consumers purchase such riders. Finally, the draft committee report language would have directed the FIO to examine the impact of non-driving related factors like credit history, homeownership status, census tract, marital status, professional occupation, and educational attainment, on the affordability of auto insurance premiums for traditionally underserved communities.

Thankfully, this report language was ultimately discarded from appropriations legislation and the year-end omnibus, so it was not included in the law. However, expansive directives like these will continue until the FIO is no longer a threat to the state insurance regulatory system, which can only happen once it is fully repealed or meaningfully reformed.

FIO Annual Report

One needs only to read the FIO's annual report each year to see its intended scope for its office; each report makes clear its intent to continue to expand its areas of focus. For example, in the September 2022 report alone, the FIO expressed its intent to work on the following areas:

- Monitoring macroeconomic developments and assessing their financial implications for the U.S. insurance industry
- Monitoring climate-related financial risks
- Monitoring the role of the insurance industry in improving the nation's cybersecurity
- Assessing the affordability and availability of auto insurance products for underserved communities and consumers
- Assessing the affordability and availability of homeowners' insurance for underserved communities and consumers

Conclusion

PIA believes that the states are the proper place for the regulation of insurance; state regulation has served the insurance industry and consumers well for over 100 years. Any attempt to increase the scope of the federal administrative state's role in the regulation of insurance is inappropriate and would negatively affect policyholders.

The FIO should be repealed, or its mandate significantly curtailed. Some substantial limitation on its growing authority is the only way to protect the primacy of state insurance regulation and ensure against further federal encroachment. PIA will continue to encourage support for legislation that would repeal the FIO or meaningfully reform it in the 118th Congress.