

State Regulators, Lawmakers Increasing OFC Opposition

BY JIM CONNOLLY AND ARTHUR D. POSTAL

NU Online News Service, Feb. 15, 3:35 p.m. EST

State lawmakers and regulators are joining together and ratcheting up their opposition to federal legislation that would create an optional federal charter for insurers.

Yesterday the National Conference of Insurance Legislators said there is “no room” for an optional federal charter and it will propose a resolution opposing OFC legislation in Congress (The National Insurance Act) during its spring meeting in Washington on Feb. 28-March 1.

NCOIL’s effort has the support of the National Association of Insurance Commissioners.

Sandy Praeger, president of the NAIC and Kansas insurance commissioner, today released a letter sent to the president of the American Insurance Association reiterating her opposition to an OFC.

The exchange began yesterday when the Washington-based AIA wrote to Ms. Praeger to criticize her article, “*Federal Bill Unnecessary*,” published Feb. 7 on the Kansas Insurance Department Web site.

In its letter Wednesday to Commissioner Praeger, AIA President Marc Racicot noted that AIA has worked with NAIC and individual insurance commissioners to reform insurance regulation, but that progress has been “uneven and has come about slowly.”

The former Montana governor went on to write that insurers need a “modern and efficient regulatory structure,” and that this can only be achieved through a federal charter option.

States, he said, will continue to receive premium tax revenue; an OFC would be optional and consumers could decide whether to purchase insurance from a state or federally regulated insurer much the way that they do with banks.

Mr. Racicot added that states would retain authority over state-regulated insurers, and an OFC would not create a federal bureaucracy because a regulator would be appointed within the Department of Treasury and funds for start-up costs for an Office of National Insurance would be provided through assessments on insurers.

In her response, Ms. Praeger noted that property-casualty insurance is “a local product with local issues that require a responsive, local regulator to help resolve consumers’ complaints and address their concerns.”

She added, “It takes quite an imagination to assume the Treasury Department could assume even a partial role in regulating insurance without creating a huge bureaucracy.”

In addition, Commissioner Praeger said that an OFC would allow insurance companies to “opt out” of comprehensive consumer protections and state oversight. “Current proposals would gut consumer protection while outsourcing most critical regulatory functions to an industry-run self-regulatory organization.”

Allowing insurers to pick their regulator would create a “race to the bottom,” she added. “The push for an OFC is, in reality, nothing more than a call for little or no regulation,” according to Ms. Praeger.

She noted that in 2006, states collected more than \$16.7 billion in revenues from insurance sources, of which \$1.2 billion, or approximately 7.2 percent, went to regulate insurance, while the remaining \$15.5 billion went to the states’ general funds for other purposes.

She asked: “How would any new federal bureaucracy be funded, if not by state premium tax dollars? Surely you are not proposing that the AIA’s member companies would be willing to pay an assessment to the federal government, in addition to the premium tax they would continue to pay to their domiciliary state. That would undoubtedly result in higher premiums for American consumers.”

She cited the Federal Crop Insurance Program as one instance which was funded by premium taxes for a while and then reversed course and took revenue from states.

Ms. Praeger wrote that bank regulators focus on safety and soundness, devoting 90 percent of their resources toward that end with the remaining 10 percent used “for their very weak version of consumer protection.” Insurance regulators, she said, split resources more on a 50-50 basis.

She added that Treasury would have to create an infrastructure to handle insurance regulation.

In her letter, Ms. Praeger cited instances in which federal regulations had lapses of oversight. She said, “Lax federal oversight caused the current disruption in the bond market. The Office of the Comptroller of the Currency allowed banks to offer unaffordable subprime loans to homeowners over the objection of state regulators, who sought to protect consumers from these unsafe products.

“The Federal Reserve allowed banks to hold risky derivative investments based on these subprime loans, which resulted in billions of dollars in write-downs.

“The Securities and Exchange Commission not only authorized these derivatives, it failed to supervise how credit agencies rated them. Everyone on the federal level who contributed the kindling, logs and matches that caused this fire should not now take away authority from state regulators who have been keeping the flames in check.”

On the flip side of the OFC issue, Rep. Paul Kanjorski, D-Pa., chairman of the House Capital Markets Subcommittee, in an article published earlier in the week in a Capitol Hill newspaper said the problems faced by bond insurers pointed up the “real need” for better regulation of bond insurers—a need that might be best served by an optional federal charter, he said.

However, at a hearing held Thursday by Mr. Kanjorski’s panel, New York Gov. Eliot Spitzer urged Congress not to rush to create a federal insurance regulator. Mr. Spitzer said “the fact that the states need to improve does not lead to the conclusion that federal regulation of insurance is the answer, especially given the performance of other federal regulators on this issue.”

But Rep. Ed Royce, R-Calif., sponsor of a bill creating an OFC in the House, remarked: “Because these bond insurers, like all insurers, are overseen solely at the state level, we do not have the same level of expertise at the federal level” that exists for other areas.

Mr. Racicot said the bond insurers’ current situation “underscores the need for strong solvency regulation that anticipates, rather than responds to, rapid societal developments that can result in major losses.”

Rep. Brian Kennedy, of Rhode Island, NCOIL president, said that through their national organizations, state officials have “collectively agreed” to oppose OFC legislation.

These organizations include NCOIL, the NAIC, the National Governors Association and the National Conference of State Legislatures, Rep. Kennedy said. They have agreed to accept the NCOIL draft resolution as a model template for states “to reiterate to their congressional delegations the harmful effects of OFC legislation currently active in both chambers of Congress,” he said.

The proposed resolution says that an OFC “would eventually draw from the states the almost \$14 billion of critical premium tax revenue they receive, bifurcate insurance regulation, result in a quagmire of federal and state directives, erode key consumer protections, and compromise guaranty fund coverage, among other things.”