EXAMINING THE AVAILABILITY OF INSURANCE FOR NONPROFITS

HEARING

BEFORE THE

SUBCOMMITTEE ON HOUSING, COMMUNITY DEVELOPMENT, AND INSURANCE

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

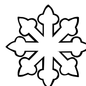
ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

JANUARY 29, 2020

Printed for the use of the Committee on Financial Services

Serial No. 116–79



U.S. GOVERNMENT PUBLISHING OFFICE

42–794 PDF WASHINGTON : 2021

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EXAMINING THE AVAILABILITY OF INSURANCE FOR NONPROFITS

Wednesday, January 29, 2020

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HOUSING, COMMUNITY
DEVELOPMENT, AND INSURANCE,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:02 p.m., in room 2128, Rayburn House Office Building, Hon. Wm. Lacy Clay [chairman of the subcommittee] presiding.

Members present: Representatives Clay, Sherman, Green, Tlaib, Axne; Luetkemeyer, Huizenga, Tipton, Kustoff, Gonzalez of Ohio, Rose, and Gooden.

Also present: Representatives San Nicolas, Posey, and Budd.

Chairman CLAY. The Subcommittee on Housing, Community Development, and Insurance will come to order. Without objection, the Chair is authorized to declare a recess of the subcommittee at any time. Also, without objection, members of the full Financial Services Committee who are not members of this subcommittee are authorized to participate in today's hearing.

Today's hearing is entitled, "Examining the Availability of Insurance for Nonprofits." And I now recognize myself for 2 minutes to give an opening statement.

Again, welcome to our hearing. The Nonprofit Property Protection Act, H.R. 4523, would allow risk retention groups, or RRGs, to insure the property of their small and midsized 501(c)(3) nonprofit members. In addition to the liability insurance they already provide, the bill seeks to address concerns that the small nonprofits have very few choices and are struggling to get access to the property insurance coverage that they need.

At its core, this hearing is about nonprofits having the resources that they need to do their jobs. One of these resources is access to adequate and affordable insurance coverage so that the nonprofits can do their jobs with peace of mind that their valuable work has a backstop in the case of an accident.

I believe the Nonprofit Property Protection Act is a narrowly tailored attempt to amend the Liability Risk Retention Act of 1986, in order to address a specific need from a relatively small segment of the market. Research from Guy Carpenter has demonstrated that only one admitted carrier offers a stand-alone property and auto physical damage policy, and only a handful of bundled policies are available to small and midsized nonprofits. And RRGs for nonprofits cannot survive without the availability of property and auto

physical damage insurance, but commercial insurers will not provide this to RRGs, and RRGs are forbidden to do so by the Federal law which governs them, the Liability Risk Retention Act.

When property is offered by the few companies that will insure a nonprofit at all, it is only offered as part of a package policy, including liability insurance, which members of RRGs don't need or want. Six States have passed laws, two as recently as 2014 and 2015, to allow nonprofits to expand unregulated risk pools for liability and property.

I will stop there and yield to my friend from Texas, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman, for yielding. And I thank the witnesses for appearing.

Mr. Chairman, I am proud to speak on behalf of the legislation, and I thank you for holding this hearing today so that we may have an opportunity to vet some issues of concern and to move the bill forward with appropriate input.

This bill is supported by some 1,600 different entities. I have here letters from the 1,600 that I speak of, and they range from Black Lives Matter to the RRG that has associated with it some 133 institutions, and these are Historically Black Colleges and Universities (HBCUs). It also is supported by the National Human Services Assembly. This is an association of not-for-profits.

The bill, is quite simply, this: An opportunity for these 501(c)(3)s, not (4)s, to have insurance for property such that they can buy it from a stand-alone perspective. Currently, if they seek to purchase such insurance, they have to purchase it as a part of a package deal, as was indicated by the chairman. And in this package deal, they have to purchase the liability as well as the property insurance. This bill affords the RRGs the opportunity to allow for the coverage of property by self-insuring, as opposed to having to purchase it from a commercial company.

I think it is a good piece of legislation, and I look forward to talking to my colleagues more about it so that we might move it forward.

Thank you, Mr. Chairman. I yield back.

Chairman CLAY. Thank you, Mr. Green.

I now recognize the vice ranking member of the subcommittee, the gentleman from Texas, Mr. Gooden, for 5 minutes for an opening statement.

Mr. GOODEN. Thank you, Chairman Clay. And thank you to our witnesses for being here today.

I would like to start by briefly stepping back and looking at the bigger insurance picture as it relates to this hearing. In the 1980s, the national insurance marketplace faced an availability crisis in the commercial liability space. There was a hard market, and Congress enacted the Liability Risk Retention Act (LRRA), a law that created risk retention groups, known as RRGs, and those were set up under a unique regulatory structure that helped solve what was a serious problem at the time. And today, they help by servicing a specific part of the insurance spectrum.

We have a bill before us today that would allow these RRGs that serve nonprofit organizations to offer additional types of commercial insurance. Proponents of this, as I understand it, argue for expanding the LRRA because an insurance availability problem ex-

ists today. They also argue that nonprofit organizations are unable to easily acquire property coverage from the traditional marketplace.

And while they do provide an option to those who otherwise have limited options, I am more concerned about some of the potential impacts and unintended consequences that I would like to discuss here with you all today, with the panel.

Currently, RRGs operate nationwide, but are only subject to the regulations of the State in which they are domiciled, as opposed to traditional admitted insurance companies, which must abide by the same insurance laws in every State in which they offer policies.

Questions that I will have for you today include, how would an expansion of the law impact risk calculations and ultimately ensure that we are providing the important regulatory protections that Americans have come to expect within the insurance space? Furthermore, would expanding the LRRA so RRGs can offer commercial property insurance even be consistent with the original intent and reasoning of Congress when RRGs were first established?

These are just some of the questions that I hope to discuss with you all today. I realize there are competing voices, and I look forward to the discussion.

And I yield back to the chairman.

Chairman CLAY. I thank the gentleman for yielding back.

Today, we welcome the testimony of an excellent panel of witnesses, beginning with J. Robert "Bob" Hunter, director of insurance at the Consumer Federation of America; Ivoree Robinson, vice president, property and casualty, at ABD Insurance and Financial Services, Inc.; and someone whom I am very familiar with, Chlora Lindley-Myers, the director of the Missouri Department of Commerce and Insurance, who is testifying on behalf of the National Association of Insurance Commissioners; Pamela E. Davis, founder, president, and CEO of the Alliance of Nonprofits for Insurance Risk Reduction Group; and last, but not least, Jon Bergner, assistant vice president, public policy and Federal affairs, at the National Association of Mutual Insurance Companies.

Welcome to you all. Let me remind you, before you begin, that your oral testimony is limited to 5 minutes. And without objection, your written statements will be made a part of the record.

Mr. Hunter, you are now recognized for 5 minutes.

STATEMENT OF J. ROBERT HUNTER, DIRECTOR OF INSURANCE, CONSUMER FEDERATION OF AMERICA (CFA)

Mr. HUNTER. Thank you, Chairman Clay, Ranking Member Gooden, and members of the subcommittee for the opportunity to testify today. My name is Bob Hunter, and I am director of insurance at the Consumer Federation of America (CFA). In the past, I have been the Texas insurance commissioner, and I have been involved in insurance consumer advocacy for 40 years, including 15 years in the private sector, and 10 years as Federal Insurance Administrator at HUD, which now is, of course, FEMA.

In the mid-1970s, America first faced its first liability crisis, and President Ford, in my view, wisely created an interagency task force in 1975 to look into the cause and solutions of the problem. I was on that task force. And we made recommendations later,

under President Carter, to do two things: one, to change the annual statements of insurance companies so we would have better data if we ever faced another crisis like this; and two, we suggested that the product liability line was not competitive and needed greater coverage availability, and we proposed the creation of a Product Liability Risk Retention Act. A bill to achieve that was filed in 1979 and enacted in 1981.

The 1981 Act was just product liability insurance coverage. We had another crisis in the mid-1980s, which was even worse. Rates were going up even faster, with less availability. In the second crisis, we had the data. We saw that the problem was the economic cycle of the insurance industry, not an influx of claims, and that—as president of the National Insurance Consumer Organization, I testified all over the country, I testified in every State in 1986 and several times here in Congress. In reaction, the Congress, in 1986, voted to expand the Product Liability Risk Retention Act to what it is today, the commercial Liability Risk Retention Act, in effect.

In 2002, there was another bit of a crisis in the wake of 9/11, and we proposed, at that time, expanding the Liability Risk Retention Act to cover all property/casualty insurance to get over that trouble. That didn't happen.

Today, I am here to support a much narrower expansion under H.R. 4523, that asks Congress to require those States with insurance markets that failed to address the property insurance need of nonprofit organizations, and to authorize only very experienced and very stable liability RRGs to provide the coverage.

Risk retention groups that cover the liability insurance needs of nonprofit groups have served the nonprofit sector well over the past 30 years. Nonprofits that also have property insurance need to go through the private commercial market for that coverage. However, there is significant evidence that there is not a competitive market among private commercial carriers offering stand-alone property coverage, and in some States, in the wake of catastrophes, there is no market.

In 2017, a study by Guy Carpenter, as mentioned earlier, documented this problem. There was only one company writing stand-alone coverage, and we are told that that one company may leave the market, which would leave no companies writing the stand-alone coverage. Some say, well, why don't these nonprofits buy the package policies, like the business owners' package? The problem is that those policies don't cover what they need in liability. One of our member companies who does consumer advocacy was offered a policy, but it wouldn't cover consumer advocacy, and that was the only policy they could find.

What we need is policies that are designed for these nonprofits, and these nonprofits deal with all kinds of tough situations, using volunteers usually. They are into situations like homeless situations, situations with drug abuse, sexual abuse, all kinds of wonderful services that we really need. They need the kind of coverage that actually fits their model, their real risk.

It is an important Federal role in establishing this eventuality. The bill is very safe, I think, and provides enough protection for these consumers who, in effect, own these RRGs, and they are in-

suring themselves really through these RRGs. So, they are not going to try to cheat themselves.

And they do have strong standards for solvency in this bill. No RRG that has existed for 10 years or more, which is the standard in the bill, has ever gone insolvent.

Now, some have said, well, shouldn't they be covered by the guaranty funds? And I am willing to say that CFA would support amending the bill to allow risk retention acts to go into guaranty funds, although I don't think it is absolutely necessary the way the bill is drafted.

[The prepared statement of Mr. Hunter can be found on page 66 of the appendix.]

Mr. SAN NICOLAS. [presiding]. Thank you, Mr. Hunter.

The Chair now recognizes Ms. Chlora Lindley-Myers for 5 minutes.

STATEMENT OF CHLORA LINDLEY-MYERS, DIRECTOR, MISSOURI DEPARTMENT OF COMMERCE AND INSURANCE, ON BEHALF OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS (NAIC)

Ms. LINDLEY-MYERS. Thank you for the opportunity to testify here today.

The NAIC believes that nonprofit organizations serve a critical role in our country, and we recognize the importance of ensuring that they have access to insurance that meets their needs. We understand that some have raised concerns regarding the availability of commercial property coverage for nonprofits. They have also argued that H.R. 4523, the Nonprofit Property Protection Act, is the appropriate mechanism for addressing such concerns. On both accounts, we respectfully disagree.

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, no such crisis exists today in the commercial property insurance market. Traditional admitted carriers do provide coverage to small and medium-sized nonprofits, albeit several offer it in the form of a full business owner's policy that contains both liability and property coverages. Also, if there are limited options for a specific policyholder in the admitted markets, policyholders have access to surplus line markets as well as the residual market.

State insurance departments have received few, if any, complaints from nonprofit policyholders, indicating that they are unable to obtain the coverage that they require. Notwithstanding any questions surrounding availability, we are troubled by the idea of less regulated RRGs providing commercial property coverage.

Even though RRGs may operate in multiple States, they are only required to be licensed in one, and the regulatory authorities of nondomiciliary States are significantly curtailed. These limitations are significant because RRG policyholders do not get the benefit of the oversight that multiple sets of eyes can offer. This is particularly concerning as only 30 percent of all RRGs write business in their State of domicile, which means that State has limited first-hand exposure to the RRG's conduct and policyholders.

Under H.R. 4523, an RRG already subject to weaker regulatory requirements based thousands of miles away with no presence in Missouri would be able to write property coverage for Missouri policyholders, and I would have limited oversight or ability to act to protect those policyholders should anything happen. I couldn't even conduct a market conduct examination to determine if they were bad actors.

Further, while it is true that all States are required to establish a baseline level of regulatory requirements for RRGs to obtain NAIC accreditation, those requirements are specifically designed for the purpose of RRG regulation. They relate to the liability lines of business that RRGs are entitled to write, they are subject to the limitations in the LRRA, and are not the same as the admitted market. The minimum capital requirements are different, the types of assets that can be used for capital are different. The accounting basis can be different. And as a result, the threshold for intervention can be opaque to regulators.

Historically, RRGs have had a higher rate of insolvencies. Over the past 10 years, RRGs entered receivership at nearly 2 times the failure rate of admitted carriers. In the event of an insolvency, RRG policyholders do not have the same protections as the admitted market.

The LRRA prohibits RRGs from participating in the State guaranty fund system. So unlike buying from a traditional insurer, nonprofits have no safety net should their RRG fail.

My written testimony provides additional details regarding options for RRGs that wish to provide property coverage to their members, such as converting to an admitted carrier or affiliating with one. Expansion of the LRRA, however, is not the appropriate solution.

In conclusion, we are concerned that preempting the States to allow RRGs to sell commercial property coverage would create more risk for RRGs, and ultimately, their policyholders. The limited oversight of nondomiciliary States in the RRG regulatory framework, coupled with the lack of State-run guaranty fund protection and increased risk of insolvencies associated with RRGs could expose nonprofit organizations and those who rely on them to unnecessary risk.

I thank you for this opportunity to testify today, and I would be pleased to answer any questions you may have.

[The prepared statement of Ms. Lindley-Myers can be found on page of 75 of the appendix.]

Mr. SAN NICOLAS. Thank you, Director Lindley-Myers.

The Chair now recognizes Ms. Ivoree Robinson for 5 minutes.

STATEMENT OF IVOREE ROBINSON, VICE PRESIDENT, ABD INSURANCE & FINANCIAL SERVICES, INC.

Ms. ROBINSON. Chairman Clay, Ranking Member Gooden, and members of the subcommittee, I am Ivoree Robinson, vice president of ABD Insurance and Financial Services, an insurance broker. Thank you for the opportunity to testify today about the difficulties that small, community-based nonprofits face finding appropriate property/casualty insurance. In doing so, I will describe my experience in trying to obtain coverage for one of my clients, Black Lives

Matter, and explain why I believe risk retention groups must be able to offer property insurance to their nonprofit members.

ABD Insurance and Financial Services is one of the fastest-growing private insurance firms in the United States. We work extensively directly with nonprofits to help them obtain property/casualty insurance that is appropriate for them and that they can afford.

Our clients serve our communities in a variety of ways. They help those with disabilities such as cerebral palsy, Down syndrome, and autism. They rescue thousands of pets, and provide care for the sick and injured. They work with those addressing global problems including climate change, inequality, and food insecurity. While this variety and creativity is extremely good for our communities, it can be challenging for insurance companies to tailor affordable insurance for them.

Even in the best and most competitive of insurance markets, nonprofits always seem to be at a disadvantage. Out of the more than 150 companies that we represent and work with, only about 3 percent—yes, just 3 percent—are focused exclusively on helping nonprofits with the specialty insurance that they need and helping them to thrive in the communities that they serve. None of those companies provide stand-alone property that small nonprofits need to pair with the liability insurance they obtain from their own risk retention groups.

I began actively working with the risk retention group for nonprofits several years ago. As with all insurance companies I work with, I made sure that the risk retention group offered appropriate insurance policies, had a good reputation for fairly paying claims, and was financially strong. Unfortunately, there are a couple of trends occurring simultaneously in our industry right now that are making securing affordable insurance even more difficult for small, community-based nonprofits.

First, there is an increasing trend towards automation within the insurance industry. While this makes good sense for insurance companies hoping to shrink their operating margins, it does not work well for organizations who are community-based like nonprofit. That does not fit into their underwriting box due to their own unique services that nonprofits offer.

In addition, despite the opponent's assertion that there is no crisis at this time, the insurance industry right now is in one of the most difficult markets we have seen in decades, which means sharp increases in premiums for all policyholders in 2020 and beyond.

The insurance markets have suffered record claims and losses due to wildfires, hurricanes, floods, and increased litigation around sexual abuse, and we can expect those trends to continue. This has resulted in decreased market capacity to provide coverage, increases in premiums, as much as 100 percent for policyholders, and unprecedented numbers of cancellations and nonrenewals.

In fact, today, one of the largest nonprofits insurance companies informed brokers they are canceling coverage for all foster care agencies, adoption, and housing-related nonprofits at renewal this year, which could begin as soon as March for bundled insurance products.

I would like to close with one example of why it is extremely important that risk retention groups continue to exist. I am an insurance broker for Black Lives Matter. My experience in trying to find insurance for them has solidified my support for risk retention groups and their important role, particularly in supporting new and emerging community-based organizations and civil justice organizations. I spent nearly a year, and endured rejections from over 90 traditional admitted insurance carriers and companies in my efforts to find coverage for Black Lives Matter.

Insurance underwriters reacted to sensational headlines rather than examining the actual operations of this organization. Ultimately, it was the nonprofit's own risk retention group that provided their necessary coverage.

Without insurance, organizations like this cannot obtain financial support through fiscal sponsorship, rent facilities, receive permits to hold rallies, raise funds for government resources, or engage in services that individuals are willing to provide on a volunteer basis for their nonprofit board members.

I am proud of the industry I have chosen for my career, but this experience made me see very clearly how not having access to insurance can impede the important work of our community organizations. We have found that risk retention groups, their solution, to be an excellent one for small and midsized community-based nonprofits.

We cannot stress strongly enough how important it is that H.R. 4523 become law so that well-capitalized and seasoned risk retention groups are able to provide this important property insurance to their nonprofit members.

Thank you.

[The prepared statement of Ms. Robinson can be found on page 80 of the appendix.]

Mr. SAN NICOLAS. Thank you, Ms. Robinson.

The Chair now recognizes Mr. Bergner for 5 minutes.

STATEMENT OF JON BERGNER, ASSISTANT VICE PRESIDENT, PUBLIC POLICY AND FEDERAL AFFAIRS, NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES (NAMIC)

Mr. BERGNER. Thank you. And good afternoon, Mr. Chairman, Ranking Member Gooden, and members of the subcommittee. Thank you for the opportunity to testify here today. My name is Jon Bergner, and I am the assistant vice president for public policy and Federal affairs for the National Association of Mutual Insurance Companies (NAMIC).

NAMIC membership includes more than 1,400 regional and local mutual insurance companies on Main Streets across America, as well as many of the country's largest national insurers. Though not 501(c)(3)s, mutual insurance companies are also not-for-profit organizations which exist solely for the benefit of their policyholders, and so share a certain affinity for those entities that are the subject of today's hearing.

In speaking on behalf of NAMIC's diverse and unique membership, which is made up of many of the nation's smallest insurers, we hope to provide a useful perspective for the conversation on nonprofit insurance and risk retention group expansion.

I want to start by saying that NAMIC members are community leaders across America and support the work that many 501(c)(3)s do in our communities throughout the nation. However, we do not agree that a crisis exists in the commercial property market and believe that an expansion of the scope of risk retention groups would be unnecessary and inappropriate. Therefore, we are opposed to H.R. 4523, which we believe would needlessly undermine the State-based insurance regulatory system here in America.

In short, NAMIC opposes H.R. 4523 for four key reasons. Number one, no national insurance availability crisis exists that would warrant circumventing longstanding State insurance regulations.

Number two, because no crisis exists, allowing RRGs to offer commercial property and auto insurance would serve only to create an unlevel regulatory playing field and a competitive advantage for a handful of RRGs in this market.

Number three, the RRG regulatory regime is substantially different and less rigorous, undermining consumer protections and potentially placing 501(c)(3) policyholders at risk.

And number four, States have already created more tailored and effective risk-transfer mechanisms and alternative solutions for 501(c)(3)s.

Simply put, NAMIC does not see compelling evidence that there is a national availability crisis in the commercial property insurance market for 501(c)(3)s. There are insurance coverages, including property coverage, available and, in some cases, marketed directly to nonprofit organizations.

Allowing RRGs to sell the same commercial insurance products already offered in the admitted markets simply gives them an unfair competitive advantage over traditional insurance companies that abide by all of the regulatory standards and consumer protections of each State in which they operate. This is because, in contrast to admitted carriers, risk retention groups are allowed to operate nationwide, but they are only substantially subject to the regulations of the State in which they are domiciled. By definition, this means that there is less oversight by fewer regulators.

Further, they are not required to participate in State guaranty funds designed to protect consumers. This arrangement was specifically designed to deal with a widely recognized crisis in the commercial liability insurance markets in the 1980s. No such crisis exists today in the commercial property market.

Even if one were to stipulate there was an availability issue for nonprofits, which we do not, it does not mean that passage of H.R. 4523 and the expansion of the RRG mandate is the only, best, or even an appropriate remedy.

There are other mechanisms through which a nonprofit could effectively transfer its risk. If a nonprofit has real difficulty in finding the exact coverage it desires in the admitted market, it can have a broker go to the surplus lines market. In the event that an organization cannot find coverage in either the admitted or the surplus lines market, many States have residual market mechanisms, like Fair Access to Insurance Requirements (FAIR) plans, to which they can go to acquire a commercial property policy.

And finally, in the event none of that works, the State could address any concerns about coverage availability on its own, working

through the State insurance commissioners or the State legislatures on a tailored solution, like at least one State has already done in this space.

NAMIC believes the issue is quite simple. If RRGs want to offer the same products as admitted insurers, they should play by the same rules. There was nothing novel about the structure of RRGs when they were created. The concept of an insurer that is owned and managed by and for the benefit of its policy-holding members has been around since the first successful U.S. mutual insurance company was founded by Benjamin Franklin in 1752. I would note that company is still in existence today.

Given that NAMIC's membership contains numerous smaller insurance companies that write in multiple States for niche markets, we would invite any RRG not satisfied with the statutory limitations on its offerings to strongly consider reorganizing as an admitted mutual insurance company.

As I close, I think it is important to highlight the fact that State regulators, independent insurance agents, and the entire primary insurance industry all agree that H.R. 4523 would undermine the State-based system of insurance regulation and increase risk to consumers.

Again, thank you for the opportunity to speak here today, and I look forward to answering any questions you may have.

[The prepared statement of Mr. Bergner can be found on page 34 of the appendix.]

Mr. SAN NICOLAS. Thank you, Mr. Bergner.

The Chair now recognizes Ms. Davis for 5 minutes.

STATEMENT OF PAMELA E. DAVIS, FOUNDER, PRESIDENT AND CEO, ALLIANCE OF NONPROFITS FOR INSURANCE RISK RETENTION GROUP (ANI)

Ms. DAVIS. Chairman Clay, Ranking Member Gooden, and members of the subcommittee, thank you for the opportunity to testify about the availability of insurance for nonprofit organizations and to explain why the Nonprofit Property Protection Act is critical to assure uninterrupted insurance coverage for tens of thousands of nonprofit organizations. I am the president, CEO, and founder of Alliance of Nonprofits for Insurance Risk Retention Group, known as ANI, and I am testifying on behalf of them today.

ANI insures small and midsized community-based nonprofit organizations across the country, those that are in neighborhoods who work with the most vulnerable among us. They are homeless shelters and programs for those with Alzheimer's, victims of abuse, and the developmentally disabled. They are animal rescues, elder care services, drug and alcohol rehabilitation centers, school arts programs, and faith-based organizations.

Eighty percent of the member insureds have annual budgets of less than a million dollars. These little nonprofits never wanted to be in the insurance business, but created their own insurance companies as risk retention groups against great odds because commercial insurance carriers abandoned them.

And last year, ANI nonprofits' own risk retention group experienced a 30 percent increase in applications as commercial insur-

ance companies once again nonrenewed policies, restricted coverage options, and raised prices on nonprofits.

This year, we have seen the trend continuing to escalate, and as an RRG, we have been successfully insuring these organizations for difficult liability risks such as auto, sexual abuse, and employment practices for decades. We also offer free consulting and educational services, such as employment risk management and driver training, to nonprofits whose small budgets do not allow them to provide and purchase these services. But our future ability to serve nonprofits is now in question.

Commercial insurers, when they are willing to offer insurance for small nonprofits, provide it only as a bundled package. That is, small nonprofits must purchase the liability and the property together, similar to a triple-play cable package.

However, by Federal law, risk retention groups are prohibited from offering property insurance to their members. Only one company in the country offers a stand-alone property insurance program appropriate for small and midsized nonprofits that are members of a risk retention group. This program was meant to address the market failure until other commercial companies started to offer the product.

Several years ago, the single company offering the property indicated that they intend to discontinue the program. We asked insurance brokers and agents who work with nonprofits to find other commercial insurance companies to provide the stand-alone property insurance for their clients. They told us in no uncertain terms that there were no appropriate policies options available.

Hearing that, we engaged Guy Carpenter to conduct an independent study to see whether there were insurance department filings that we had overlooked. Surely, some other carrier provides this coverage. Guy Carpenter's research turned up no viable commercial options for the stand-alone property form for small nonprofits. We have exhausted all of our options for a market-based solution.

To provide consumer protections, the Nonprofit Property Protection Act has minimum capital and seasoning requirements before any risk retention group can offer property insurance. And to make sure this bill will only correct a market failure and not interfere with an otherwise well-functioning commercial property market, the bill has three additional provisions.

One, risk retention groups may offer property insurance only to their members that are 501(c)(3) nonprofit organizations.

Two, any single nonprofit may be insured by a risk retention group only for up to $50 million in total insured value, because it is presumed that larger nonprofits will be able to purchase these stand-alone coverages in the standard market.

Three, and this last point is critically important, no risk retention group may begin offering property insurance to its members if there are three licensed, admitted insurance companies offering these property coverages that nonprofits need in a State as determined by the insurance commissioner.

Let me emphasize that point. Under the provisions of this bill, any insurance commissioner can stop any risk retention group from beginning to offer property insurance simply by listing on its

website three licensed, admitted companies that write this coverage in that State. We have been asking insurance commissioners to provide us with the names of companies that will write this coverage for years and they have not provided the name of a single company, nor have they suggested language to improve the bill.

Every industry, even insurance, must make room for necessary and prudent innovation like the Nonprofit Property Protection Act. Congress can correct a market failure that insurance commissioners and commercial insurance companies have either been unable or unwilling to fix. With H.R. 4523, nonprofits can solve this problem for themselves.

Thank you.

[The prepared statement of Ms. Davis can be found on page 42 of the appendix.]

Mr. SAN NICOLAS. Thank you, Ms. Davis.

The Chair now recognizes the gentleman from Texas, Mr. Green, who is also the Chair of our Subcommittee on Oversight and Investigations, for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. I thank the witnesses for appearing as well.

Let me start with you, if I may, please, Ms. Lindley-Myers. Ma'am, you cited an insolvency rate earlier, did you not?

Ms. LINDLEY-MYERS. I indicated that RRGs are 2 times as likely to fail.

Mr. GREEN. And in citing your insolvency rate, you did not address those with experience of 10 years or more. Is that correct?

Ms. LINDLEY-MYERS. Well, the—

Mr. GREEN. Is that correct?

Ms. LINDLEY-MYERS. That have 10 years or more?

Mr. GREEN. Yes. Is it correct that you did not address them?

Ms. LINDLEY-MYERS. I did not mention that at all.

Mr. GREEN. You did not mention it. And is it true that with 10 years or more, we have never had a single insolvency? Is this true?

It is. And you neglected to mention it.

Is it true that if you had your way, you would eliminate the RRGs?

Ms. LINDLEY-MYERS. That is not true.

Mr. GREEN. You would keep them?

Ms. LINDLEY-MYERS. If they would operate under State—I would keep them if they would operate such that they would allow—either combine themselves with an admitted carrier—

Mr. GREEN. Let me continue. Is it also true that you have read the bill?

Ms. LINDLEY-MYERS. It is.

Mr. GREEN. You have read the bill?

Ms. LINDLEY-MYERS. It is.

Mr. GREEN. I take it, yes, you have read the bill?

Ms. LINDLEY-MYERS. I did.

Mr. GREEN. Okay. In reading the bill, did you happen to note over on page 4, line 24, the statements that indicate that if there is no crisis, then there will be no RRG in a given State by simply certifying that there is not a crisis?

Ms. LINDLEY-MYERS. It indicates that if there is a crisis and an RRG is already operating; it doesn't say that they have to stop operating once it is determined that no crisis exists.

Mr. GREEN. So if the bill—if we amended the bill to include language to accommodate you, you would then support it?

Ms. LINDLEY-MYERS. No. Because I feel—

Mr. GREEN. But then, you just made the point that if there is no crisis, you would accept the bill. And if at some point the crisis does exist—if the crisis exists, you would accept the bill, but if there is no crisis, then you would want to return to a State wherein the RRG would not be allowed to do business in the State?

Ms. LINDLEY-MYERS. There is no crisis, and because—and if there is an issue, as has been mentioned by the Chair when he was giving his opening statement, apparently the nonprofits have gone to States and said, hey, this is a problem for us in this State. And so, therefore, we want to correct it. In certain situations, those things—

Mr. GREEN. If I may, my time is quite limited. If there is a crisis, we have one circumstance. But if there is not a crisis, the authorities in the State only have to certify that there are three companies that provide this type of insurance. So, we cover the circumstance of a crisis. If there is a crisis, then they won't operate in the State. If there isn't, then the 501(c)(3)s can be accommodated.

Let me ask you, ma'am, the lady who represents Black Lives Matter, Ms. Robinson, tell me about the difficulty in acquiring insurance, please, for an entity such as Black Lives Matter.

Ms. ROBINSON. Sure. What it comes down to is, because they do unique services, so not a one-size-fits-all type of organization, the stance of the insurance companies, if they don't feel comfortable with the risk, if they don't like any perceived liability based on whatever they find online or Google, whatever their own personal inferences are, they don't offer the coverage. This is why it took me more than a year.

And Black Lives Matter is one of many organizations that have this difficulty. As I mentioned, I work with hundreds of nonprofits, in my experience. I would just ask anyone on this panel if they have had direct experience in working with nonprofits to place this coverage as opposed to just the legislative side?

Mr. GREEN. Let me conclude with, Mr. Chairman, I would like to put the 1,600 letters supporting the legislation into the record.

And I would like to close with the bill having covered the question of a crisis in terms of whether it exists or not. If there is a crisis, then they operate. If not, they can't operate in a State. And no company with 10 years of experience or more has ever failed, and you neglected to mention that.

I yield back.

Mr. SAN NICOLAS. The gentleman yields back.

The Chair now recognizes the gentleman from Texas, Mr. Gooden, for 5 minutes.

Mr. GOODEN. Thank you.

The reason a State guaranty fund exists, I believe, and they are all active in all 50 States, is to protect policyholders if an insurance company defaults on benefit payments or becomes insolvent. Is that correct, Director Lindley-Myers?

Ms. LINDLEY-MYERS. That is correct.

Mr. GOODEN. So can you tell me, do these risk retention groups have access to this State guaranty fund? Do they have access?

Ms. LINDLEY-MYERS. They do not.

Mr. GOODEN. What does that mean, moving forward? If we are using the history of no insolvencies as a benchmark, then why do we even need these State guaranty funds?

Ms. LINDLEY-MYERS. The State guaranty funds exist to protect policyholders. If an RRG fails, they are not a part of the State guaranty fund, so, therefore, the assets of the nonprofit would have to be used to pay claims. If a company that is in the admitted market fails, then they have access to the guaranty fund.

Mr. GOODEN. So if the RRG wants to expand their coverage, which I am hearing today, why wouldn't they just become an admitted carrier? Are they being barred from that process?

Ms. LINDLEY-MYERS. They are not being barred from that process. And as has been mentioned here today, if they found that there was an issue in a particular State, they have gone to that particular State's insurance commissioner and asked that this issue, whatever the issue may be, be taken care of in that particular State, and that is what has happened in the past.

Mr. GOODEN. Ms. Davis, did you want to join in?

Ms. DAVIS. I did. Thank you very much. I wanted to talk a little bit about the guaranty fund issue. We have always said, as we work through this legislation, that if Congress wanted us to be part of the guaranty funds at the election of an insurance commissioner in a State, for the benefit of writing the property insurance, we would be happy to do that, and we have always said that. So, we would be happy to do that, if that is something that you feel strongly about.

I would also like to speak a little bit about why we cannot become admitted, if you don't mind. We did actually look into it. We have looked into every option we can possibly imagine to try to solve this problem before asking Congress to fix it. And I did call an expert and suggested to him what we were planning to do, what we were hoping to do, and honestly, he laughed at me. He said, "This is ridiculous, the path to being licensed/admitted for the small amount of property you are talking about for these little organizations just simply makes no sense."

Nevertheless, we looked into it. But there is a specific reason why Alliance of Nonprofits for Insurance cannot become licensed and admitted. And the reason for that is that we are actually a 501(c)(3) nonprofit ourselves. As an insurance company, there is a certain law, it is a Federal law called 501(n) under the IRS Code, and we were tax-exempt under that IRS Code. And it requires us to be organized as a nonprofit under State laws, provisions, authorizing risk-sharing arrangements for charitable organizations. There are only six States that allow that, and so we could not be licensed/admitted in every State.

Mr. GOODEN. Got it. Thank you, Ms. Davis.

Mr. Bergner, did you want to add your thoughts on this matter?

Mr. BERGNER. Sure. I think we have seen in the past that there have been several risk retention groups that have indeed reorganized to become admitted carriers. I am not familiar with the spe-

cifics of the Federal law that Ms. Davis was referring to in terms of the inability to reorganize. I might be happy to help try to amend that law, if that were the desire, to try to streamline the process for becoming an admitted carrier and, then, therefore playing by all the same rules.

I would just note the dynamic membership is a great example. It sort of belies the notion that you can't be an admitted carrier operating as a mutual in niche markets and be small with specific risks, because that is what our members do every day on Main Streets across America. So, I will just leave you with that.

Mr. GOODEN. Yes, Ms. Robinson, I have 30 seconds, and you can have them all.

Ms. ROBINSON. I just want to add that when you talk about the guaranty funds, that is the notion that an insurance company or RRG goes out of business before that ever happens. We have noted that that has never happened in history, if they have been in business for over 10 years.

Furthermore, I come from California. You have seen the wildfires that have occurred. In the last couple of years, the only company that has gone out of business has been a traditional insurance carrier out of the Camp Fire and the Paradise Fire, and they are regulated and they are backed by California guaranty insurance funds. So I just want to say that I am astonished at the fact that that is the fear-based kind of notion that we are hearing today as opposed to the realities, which risk retention groups do not face.

Mr. SAN NICOLAS. Thank you.

The Chair now recognizes the gentlewoman from Michigan, Ms. Tlaib, for 5 minutes.

Ms. TLAIB. Thank you, Mr. Chairman. And thank you all so much for being here.

I appreciate, coming from the nonprofit sector, kind of a critical conversation of, how do we cultivate an environment that allows so many nonprofits across the country, especially in 13 District strong, to really in some ways supplement what the government isn't doing enough of.

I wanted to ask Ms. Robinson, there was a study that found, in 2017, that nonprofits have very few options when it comes to obtaining property insurance coverage, especially small and midsized ones. One of the things I wanted to ask is, is it just property insurance? What else do nonprofits need insurance for?

Ms. ROBINSON. It is certainly not just property insurance. They need insurance for abuse liability. They are often dealing with vulnerable populations, such as children and the elderly. They need coverage for directors' and officers' liability, as they cannot form boards. A lot of people want protection in order to get that coverage. They are the primary type of organizations that have mass numbers of volunteers, and so they have a unique type of insurance and risk exposure on that front, different than the for-profit community.

Ms. TLAIB. And, Ms. Lindley-Myers, and Mr. Bergner, the same study, I think, showed that nonprofits, particularly smaller nonprofits, have limited access to property insurance coverage because of bundling or something. Can you explain to me what that is and how this—there have been some arguments that this coverage is

amply available, and I know you all have been kind of going back and forth about this. But if my mom is right now watching this, explain this in the simplest terms. It is really important for people to understand in a much more simple way, why there is some disagreement here, and what are some of the core issues.

Mr. BERGNER. Sure. Thank you, Congresswoman. I appreciate the question. Yes, there has been a lot of discussion around bundling. This is something that insurance companies will typically do in the marketplace because it is more efficient and cost-effective to bundle two or more different—

Ms. TLAIB. Do they make more money doing it that way or—

Mr. BERGNER. No. It typically provides savings to the consumer. This is something that the consumers in the marketplace have desired. And so, you will see it quite frequently if you turn on the TV, "Bundle your home and auto." So, that is in the personal line side.

In this case, the conversation is about bundling your liability and your property. This is what consumers typically are saying they want, and so that is what many in the market tend to offer.

I would just note, there is kind of an attack on bundling, that I at least have heard throughout this debate, which is a little odd considering the purpose of H.R. 4523 is to allow for bundling by risk retention groups, so—

Ms. LINDLEY-MYERS. And I would agree with Mr. Bergner. But I also want to draw your attention to, at least the executive summary indicates that bundling is preferred because it is efficient and it allows the carrier or it allows, in this case, a nonprofit to put all of that together. I have heard conversation about monoline; we just need property, we just need property. But the efficiency is in bundling, and that is the rationale for that.

Ms. TLAIB. I'm sorry, I will get to you. Mr. Hunter, do you have something to add?

Mr. HUNTER. I think the problem with bundling is the liability part of the bundle. The business owner property—policy has liability in it, but it is not the kind of liability that is needed by the nonprofits.

Ms. TLAIB. Is it less coverage?

Mr. HUNTER. It is liability coverage bundled with property, which is efficient for most people. But if the liability part doesn't offer what you need, you don't want to bundle. You want to go to your risk retention group, your RRG, which gives you exactly what you need, which covers the kinds of risks you have when you are dealing with volunteers and when you are dealing with the elderly and you are dealing with sexually abused people and really difficult risks. You have to have tailored coverage, so the RRG is often the tailored coverage. They would have to give that up if they went to a bundle. They don't want to give it up.

Ms. TLAIB. Got it.

Mr. HUNTER. They want to add property insurance, and that is what the bill does.

Ms. TLAIB. Not a lot of options there.

Go ahead, Ms. Robinson?

Ms. ROBINSON. Yes. I just want to add that when you talk about a bundled program as discussed here, those insurance companies

have one idea of what they want to write, very black and white, in this little underwriting box of the type of risk they want to insure. So if there is organization, as I was discussing earlier, say, like Black Lives Matter, where they don't want the liability, they are not offering any coverage because what they are approved for is this one bundled option, further limiting the options that nonprofits have. And again, I see this, I am on the ground, I work with nonprofits for a living. I am talking to them every day and I do it for—

Ms. TLAIB. Thank you.

I can see my Vice Chair has learned a technique from Chairwoman Waters with the clicking. So I heard you, yes. Thank you so much. I yield back.

Mr. SAN NICOLAS. The gentleman from Tennessee, Mr. Kustoff, is recognized for 5 minutes.

Mr. KUSTOFF. Thank you, Mr. Chairman.

And I don't know if anybody has stated this, but I would like to recognize our former colleague, Mr. Walsh, who is here today in the audience. It is good to see him, and it was good to visit with him a week or so ago. And also to Ms. Lindley-Myers, Commissioner, I appreciate you, I remember you from your days in Tennessee and your public service, and we certainly do appreciate it. And I appreciate all of the witnesses being here today.

Mr. Bergner, if I could refer to everybody's opening statements, and as it relates to data, can you give us any evidence, if you will, is there any conclusivity as to whether there is data to support an assertion that nonprofits have difficulty finding commercial property insurance at affordable rates?

Mr. BERGNER. Sure. Thank you, Congressman. I can at least address just a couple of points in that space.

The first is, according to the Urban Institute's nonprofit center, there is upwards of—I think the latest numbers were 1.56 million nonprofits, 78 percent of which are 501(c)(3)s, which would put that number over 1.2 million. We generally, in not seeing a crisis—and I would echo or acknowledge my colleague, Director Lindley-Myers', point that the in-State insurance departments are not really seeing folks coming to them and expressing a crisis of availability.

And so with that kind of number and at the overall level—granted, not all of them may need property insurance, conceded, stipulated—but one would think this would be a lot more obvious than it is.

And then the second point, I know there is a lot of discussion surrounding the Guy Carpenter study, such as it is, to sort of demonstrate that there is no availability. I can't really comment on kind of an assessment on that. The only thing that, to my knowledge, has ever been released is a 2-page document summarizing a survey that was done. And without any of the assumptions or search parameters or underlying data, I wouldn't feel comfortable being able to rely on that to change Federal statute.

So, generally speaking, we don't think there is a lot of—the words you use—"conclusive evidence" to suggest there is a crisis.

Mr. KUSTOFF. Do you have any concern—as it relates to the bill that we are talking about and that is being considered—about the

bill's regulatory approach and whether it could ultimately increase policyholders' risk exposure?

Mr. BERGNER. We do. And in my opening statement, I sort of raised the issue of, by definition, being substantially regulated only by your State of domicile means less oversight by fewer regulators. That is just inherent in the regulatory regime. So I think our membership would say this is a false choice. We don't have to choose between consumer protection and availability; we can have both. We have had it for 200 years, with many of our companies.

Mr. KUSTOFF. Thank you. And, Director Lindley-Myers, if I could, with you, with your time in Tennessee as the deputy commissioner, do you have any thoughts about whether a State like Tennessee could face risks not understood by, say, the insurance regulator in Vermont, if this were enacted?

Ms. LINDLEY-MYERS. I would say that having an RRG that is domiciled in Tennessee, I have no control in Missouri, because I am a nondomiciliary State. So any State that is the nondomiciliary State would have problems monitoring that RRG, knowing what is happening. We can't do market conduct exams. We don't know their financials. And in looking at a report from Risk Retention Reporter, when you look at the 10- to 15-year range, according to that, there were 8 that were insolvent. One was 15 years or more. And so, what you are looking at is the ability of that risk retention group to operate and try to operate in some other jurisdiction that they know nothing about.

Mr. KUSTOFF. Thank you very much.

My time has expired, so I will yield back. Thank you to all the witnesses for appearing today.

Mr. SAN NICOLAS. The Chair recognizes the gentleman from Tennessee, Mr. Rose, for 5 minutes.

Mr. ROSE. Thank you, Vice Chair San Nicolas, and Vice Ranking Member Gooden.

I ask unanimous consent to enter into the record a letter from the Coalition Organized for the Future of Insurance Regulation, expressing opposition to H.R. 4523, the Nonprofit Property Protection Act.

Mr. SAN NICOLAS. Without objection, it is so ordered.

Mr. ROSE. Nonprofit organizations are often the lifeblood of the communities in which they serve. But the issue at hand here today really boils down to expanding risk retention groups and necessarily expanding the Federal Government's role in regulating insurance markets at the expense of our State-regulated regime.

Yes, in rare instances, Congress has acted to address insurance crises, but that has been when the size and scope of a problem rendered State-based solutions infeasible. One of these rare instances was, as we have heard expressed already, the creation of risk retention groups in 1981 in response to the problems in the liability insurance market. And we can know the scope of Congress' intent when it created these risk retention groups by reading the accompanying committee report.

Risk retention groups were not required to participate in insurance insolvency guaranty funds because risk retention groups are not full-fledged, multiline insurance companies, but rather, limited operations providing coverage only to member companies and only

for a narrow group of coverages. You have a lot of entities that started out with a very narrow purview, and then they want to get beyond that narrow purview.

Ms. Lindley-Myers, does H.R. 4523 allow risk retention groups to combine commercial property and liability insurance similar to what admitted insurers would do?

Ms. LINDLEY-MYERS. Yes, they do, but generally speaking, if there is an issue as far as a risk retention group, at least as it relates to Missouri, and certainly in my time when I was in Tennessee, you are able to get it from the admitted market. If you can't get it there, we usually go to the surplus lines market. If you can't get it there, there is usually a residual market in which we can kind of go and get coverages for.

So that is why I staunchly believe that there isn't that kind of an issue because there are other services that are out there that go to the surplus lines—Uber is one—that goes to the surplus lines market. It is not the same as taxi cabs or whatever, and so they actually have a marketplace to go to.

Mr. ROSE. In your opinion, would this expand RRGs beyond what Congress originally intended when they were first created?

Ms. LINDLEY-MYERS. In my opinion, yes.

Mr. ROSE. After speaking with officials in Tennessee about risk retention groups in general, I have to admit I am concerned about opening RRGs up further, and our State officials share those concerns. The fact is not only have our State officials not heard any concerns from nonprofits regarding the availability of commercial property insurance but they are reevaluating at a policy level whether or not more RRGs should be allowed in the first place, and they are very concerned about the lack of consumer protections for RRGs compared to admitted insurers.

In Tennessee, two of the seven RRGs operating in the State are under enhanced supervision because they haven't worked out well.

Mr. Bergner and Ms. Lindley-Myers, do you know of any State in which commercial property coverage is unavailable to nonprofits?

Mr. BERGNER. Not to my knowledge, no.

Ms. LINDLEY-MYERS. No.

Mr. ROSE. Are commercial insurers abandoning these nonprofit markets?

Mr. BERGNER. Not to my knowledge, no.

Ms. LINDLEY-MYERS. As it relates to Missouri, no.

Mr. ROSE. Ms. Lindley-Myers, is it true that if this crisis did exist in a certain State, then State regulators could step in to reform how State admitted insurers sell both property and liability coverage and make these products more accessible?

Ms. LINDLEY-MYERS. That is correct.

Mr. ROSE. In the NAIC's comment letter that I mentioned earlier, it is mentioned that the criteria to demonstrate coverage liability is elusory. What does the NAIC mean by that?

Ms. LINDLEY-MYERS. In each State, what we are looking at is that is why the RRGs might be problematic. Each State has its own requirements and that is what admitted carriers follow and those requirements allow for consumer protections. It allows for—especially if an admitted carrier or a surplus line carrier is oper-

ating in more than one jurisdiction—multiple eyes to look at that and assess.

Mr. ROSE. Thank you. My time has expired.

I yield back.

Mr. SAN NICOLAS. The Chair recognizes the gentleman from Missouri, Mr. Luetkemeyer, for 5 minutes.

Mr. LUETKEMEYER. Thank you, Mr. Chairman.

Welcome, Ms. Lindley-Myers. It's good to see you again, a fellow Missourian.

I spent 30-plus years as an insurance agent, so I have been in the business. I was in the business for a long time. My son has an agency, and so I am kind of aware of some of the issues you are talking about here.

It kind of concerns me a little bit by the way we are leading the discussion here from the standpoint that, we have a group that—when I was an agent, we tried to find places for nonprofits in my trade area. I tried to do this as well. So I understand your problem, and I am not against risk retention groups.

But I think for a good business practice here, for a good company to exist, it takes sound underwriting, it takes adequate capital, and you need to have a reinsurance program.

Do most of these RRGs or all of them have reinsurance?

Mr. Bergner?

Mr. BERGNER. I don't have any specific information on that.

Mr. LUETKEMEYER. Ms. Davis?

Ms. DAVIS. Yes, absolutely, we have extensive reinsurance, just—

Mr. LUETKEMEYER. All of them you are aware of have reinsurance?

Ms. DAVIS. All of them that I am aware of have reinsurance, absolutely, and many, many of them are AM Best rated as well.

Mr. LUETKEMEYER. Okay. Ms. Lindley-Myers, does everybody in Missouri have reinsurance?

Ms. LINDLEY-MYERS. To my knowledge, if there is an RRG that is operating within the State, that is not Missouri-based, they may or may not have reinsurance.

Mr. LUETKEMEYER. Okay.

Ms. LINDLEY-MYERS. It depends on the agency.

Mr. LUETKEMEYER. Okay. As a regulator, how often do you go in and look at the RRGs? Do you have oversight over them?

Ms. LINDLEY-MYERS. I have oversight over those that are domiciled in Missouri.

Mr. LUETKEMEYER. Domiciled in Missouri. Okay.

How often do you examine them?

Ms. LINDLEY-MYERS. Generally, it is on a 5-year cycle.

Mr. LUETKEMEYER. A 5-year cycle.

Do they submit annual reports to you? Do you go over annual reports? If you see something that is out of line, can that trigger an examination?

Ms. LINDLEY-MYERS. That is correct.

Mr. LUETKEMEYER. What kind of capital problems do you see or have you seen in some of these RRGs, or have you seen any at all?

Ms. LINDLEY-MYERS. I am going say that I haven't seen any in the almost 3 years that I have been there, no.

Mr. LUETKEMEYER. When they have a rate increase, do they apply to you to approve their rate increase?

Ms. LINDLEY-MYERS. They do.

Mr. LUETKEMEYER. What is your concern as the regulator with regards to the marijuana situation where a lot of these insurance companies now—and I am sure that Mr. Bergner can attest to this, too. This is a burgeoning problem. It is going to have to be underwritten correctly and going to have to be rated correctly and is going to be a really big problem in the future with rate increases for all insurance companies, not just RRGs, but across-the-board.

But I am sure RRGs are going to feel it just as much. If you are a nonprofit and you are squeezing dollars, all of a sudden, this is going to really impact, I think, an RRG.

What is your opinion, Ms. Lindley-Myers?

Ms. LINDLEY-MYERS. I would agree. It is a concern.

We in Missouri just started licensing agencies for marijuana in various parts of the State and we are having—as you know, I am also in charge of the financial institutions, which include credit unions and banks. A lot of them don't want to do it. There is some reticence in trying to provide such coverage, doctors giving people prescriptions for it. There are issues. As you know, I am over the professional registration as well. They are very concerned about doing so.

And so, if you are an RRG and you are doing that sort of stuff in Missouri, I am keeping a watch on that, but I have no idea what the laws may be like in Vermont or California or some other place, and that is why if you are the non-domiciliary State, you should be taking a huge interest in RRGs.

Mr. LUETKEMEYER. This is a concern to me because I don't—I am concerned that if you wind up with a lot of claims, are we adequately capitalized? Do you have adequate—most of them are not apparently in the guaranty fund.

Ms. LINDLEY-MYERS. Correct.

Mr. LUETKEMEYER. And then we need to make sure that reinsurance will be able to pick up the company in case it struggles.

Mr. Bergner, what are your thoughts?

Mr. BERGNER. You raise a very interesting, emerging issue for the industry. Like most things, I think the private admitted market will adjust to these things. But I don't think that market will adjust until we resolve the conflict between State and Federal law.

Mr. LUETKEMEYER. My concern with this whole thing is that if the RRGs want to go down this road, they are going to have to understand that they are going to have to play by a different set of rules than they are playing with right now, because you are getting into a whole different realm of different kinds of insurance.

There are different kinds. This is liability and property and casualty is—that is apples and oranges, and you have to have expertise in this. Otherwise, there is exposure there which, if you don't have that expertise, you are going to be in a big world of trouble. So, with that, thank you very much for being here today.

And I yield back.

Mr. SAN NICOLAS. The Chair recognizes the gentleman from Ohio, Mr. Gonzalez, for 5 minutes.

Mr. GONZALEZ OF OHIO. Thank you, Mr. Chairman, for holding this hearing, and thank you to the witnesses for your participation today.

Like a lot of folks on my side of the aisle, I believe in the State-based regulatory framework. I think that has served our country very well. It has certainly served my State of Ohio incredibly well, where we have some great insurance companies—Westfield, Nationwide, Progressive—headquartered either in my district or nearby.

And to me, the only time it really makes sense for the Federal Government to be intervening is when there is a clear market failure, like we have seen with TRIA or with flood insurance. I will tell you anecdotally we called—I don't know how many—we called a handful of nonprofits who would supposedly have this issue. We called the State organization that many belong to, asking specifically whether there was a hole in the market or whether they had been hearing from their membership about the issue that we are here to discuss today.

And I will tell you that nobody said they saw an issue, certainly not one that rises to the level of a market failure that would suggest that the Federal Government should take a look at it.

So, as we know and have heard today, Congress created risk retention groups back in the 1980s to address what at the time was a crisis in the commercial liability insurance market, where some organizations at the time were unable to obtain adequate liability insurance because of the specific nature of their risk profile, and I think fulfilling that original purpose is fine, but again, if RRGs want to expand beyond this scope, in my mind, they would become admitted insurers with all of the consumer protections that affords.

It seems ironic that the proponents of the legislation who claim that it is about making a product cheaper and more available to customers are willing to bypass the capital and other regulatory requirements of admitted insurers designed to protect consumers.

Mr. Bergner, am I incorrect here? I would imagine anything would be cheaper if the entity providing the product had an advantage over its competitors in the form of less regulation?

Mr. BERGNER. So, no, I would say you are not incorrect here. We have seen some studies that look into this, but the pricing benefits for risk retention groups flow directly from a relaxed regulatory regime. In an insurance space, it is not possible to make a risk cheaper. To insure a risk, it what it is, right?

Mr. GONZALEZ OF OHIO. That is right.

Mr. BERGNER. So the benefits flow—academics have looked at it and suggested something along the lines of 26 percent reduction in cost directly from this different regulatory regime.

Mr. GONZALEZ OF OHIO. Yes, which makes sense.

Ms. Lindley-Myers, in your testimony you said that risk retention groups are prohibited from participating in State guaranty funds. What does this mean for policyholders, should an RRG go insolvent?

Ms. LINDLEY-MYERS. If an RRG goes insolvent, the policyholders of that RRG have to look to the RRG for their claim payment, and if there is no money there, they don't get it paid. At least with the

State guaranty fund, there are some funds that are set up to pay the claims.

Mr. GONZALEZ OF OHIO. Thank you.

Do you have any data on whether or not RRGs are more prone to insolvency compared to admitted insurers? Anybody on that?

Director Lindley-Myers?

Ms. LINDLEY-MYERS. I guess I can say at least for in 2019, the State of Nevada had to shut down a transportation RRG, as well as a medical professional liability RRG. They both were placed in receivership in 2019, and the transportation one was the 8th largest RRG in 2017, with a reported premium of $66.7 million.

Mr. GONZALEZ OF OHIO. Wow. That is awfully telling.

And Mr. Bergner, in your testimony you state that ultimately, if there is an interest among RRGs in expanding into other admitted line markets, there is an option that some have already utilized which avoided an unfair and unlevel playing field while ensuring customers are protected.

Can you discuss further why you believe it is better for consumers and for RRGs to reorganize as traditionally admitted insurance companies?

Mr. BERGNER. Certainly, and I think the conversation has been ongoing today at this hearing about—and I think Congressman Luetkemeyer made the point specifically. These risks are different, and it is important for the folks who are offering the same products to be playing by the same rules, and ultimately, if that is not the case, you have what creates a competitive advantage that could theoretically lead to adverse election concerns, obviously even broader concerns, things of this nature.

So, the thesis of my testimony here today is very simple: The same products should play by the same rules.

Mr. GONZALEZ OF OHIO. Thank you.

And with that, I yield back.

Chairman CLAY. The gentleman from Ohio yields back.

I now recognize the gentleman from Guam, Mr. San Nicolas.

Mr. SAN NICOLAS. Thank you, Mr. Chairman.

I yield the balance of my time to my colleague, Mr. Green.

Mr. GREEN. Thank you for yielding.

And thank you, Mr. Chairman, as well.

Let's start with Mr. Bergner. Sir, you have indicated that you do not have these RRGs in your State, supporting entities in your State. Is that correct?

Mr. BERGNER. We actually do have risk retention group members in our membership, yes.

Mr. GREEN. Yes. You have—

Mr. BERGNER. We do.

Mr. GREEN. —approximately 40 in your State, including the Big Brothers and Big Sisters.

Ms. Davis, let me ask you now, with reference to the insolvency, you wanted to give a response. Would you kindly do so, please?

Ms. DAVIS. Yes. Thank you very much.

Just speaking about the regulation of risk retention groups generally, I think there has been misrepresentation, because we have exactly the same capital standards to maintain solvency that traditionally licensed and admitted insurance companies do. There is no

difference. I am reading from the NAIC website right now. “The NAIC accreditation program under that, the regulation of multi-State RRGs is similar to the regulation of commercial insurers.”

We have to comply with quarterly and annual requirements imposed on property and casual companies, including financial statements, management discussion and analysis, risk-based capital, auditing statements, actuarial opinions, and I could go on and on. We also have risk-focused examinations. We have additional governance standards.

There have been many, many, many things that the NAIC has done over the last 10 years to make sure that the regulation of risk retention groups and the required capital is consistent across all States and the same for risk retention groups as for commercial insurance companies.

And I am surprised to hear the representative from NAIC not take credit for all the work that the NAIC has done to make sure that there is uniform regulation, and the other States that are not domiciled States have every opportunity, if they don’t like the operation of a risk retention group in their State, they can ask for an examination by the domicile State.

If the domicile State doesn’t do that, they can actually do the examination themselves and they can shut down that risk retention group in their State by taking them to court.

So the regulation is very, very similar, and the capital standards are the same.

Mr. GREEN. Let me move to Ms. Lindley-Myers again, please.

You indicated that you don’t have any RRGs in your State. Is that correct?

Ms. LINDLEY-MYERS. That indicate that there is a crisis. There are RRGs in the State.

Mr. GREEN. Yes, you are right, but that is not what you said earlier. As a matter of fact, you have been doing business with RRGs in your State, some 213 different 501(c)(3)s.

Here is where we are. Currently, there is one company that offers the service that the RRGs would need. One. But the bill allows for certification by a given State that there is no crisis. The bill then allows for the RRG to cease and desist or not work in that State but, if it makes you comfortable, I will be more than willing to amend the bill to accommodate you in this area to make it such that if there is an RRG functioning in the State, then it would have to exit the State, but I don’t think that is the problem, because it appears to me that the large insurance companies would rather see no RRGs.

Let me ask you, if I may, Mr. Bergner, have you any experience with insuring these small 501(c)(3)s?

Mr. BERGNER. No, sir.

Mr. GREEN. At all?

Mr. BERGNER. Personally?

Mr. GREEN. Yes, sir. Any experience?

Mr. BERGNER. No.

Mr. GREEN. And, Ms. Lindley-Myers, do you have any experience?

Ms. LINDLEY-MYERS. With insuring them? No, I am a State regulator. So, I don’t insure them.

Mr. GREEN. Okay. Now, let's go to Ms. Robinson. Do you have any experience?

Ms. ROBINSON. Yes, I have been doing this for 15 years.

Mr. GREEN. And in your experience, given you have experience, are there difficulties in getting the insurance, getting coverage?

Ms. ROBINSON. There are absolutely difficulties, and I heard the examples cited here today that there have been some risk retention groups who struggled. I want to state that this narrow expansion of this law is for nonprofits, which is what we are talking about here today, so not other groups but nonprofits. So, it is difficult—

Mr. GREEN. You are the person who has had the experience.

Ms. ROBINSON. Yes.

Mr. GREEN. The others are giving us, at best, what someone else has told them. We call that hearsay.

Ms. ROBINSON. Yes.

Mr. GREEN. Finally, if I may, Mr. Chairman, I just want to ask one additional question.

Is there any reason why an RRG should not move into this line of business, other than you think that there is no crisis?

I yield back the balance of my time.

Chairman CLAY. The witnesses may answer, if they choose to do so.

Ms. Davis, you may answer.

Ms. DAVIS. I can begin. Actually, having insured for 30 years the liability insurance for nonprofits and, in California, we insure also the property through a different liability mechanism, we insure property and liability in California and we have insured liability for a very long time. It is much more difficult to insure this long tail liability. We have sexual abuse cases that might come 40 years after the fact.

The fact that little nonprofits have survived and being relegated to only insure the liability, that is the difficult line of business. And I have also insured property. And so I have much experience with that, and it is a much more predictable line to do, especially for little nonprofits in the type of property that they have. We are not high risk.

Chairman CLAY. Thank you for your response.

Ms. Lindley-Myers?

Ms. LINDLEY-MYERS. Yes. I just wanted to make sure that it is understood that it is the non-domiciliary State of these RRGs that has no view on what is going on with these RRGs that are capitalized in another State, and that it leads to less consumer protection, which is what my job is and I have been doing—I have been in regulation for 38 years.

I have seen what has been out there, and I have not encountered one nonprofit that has come into any of the States I have been in, from Connecticut, Missouri, Kentucky, Tennessee, and back though Missouri again that has said, "I can't find any coverage."

Chairman CLAY. Thank you for that response.

I now recognize the gentleman from California. Mr. Sherman, who is also the Chair of our Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, for 5 minutes.

Mr. SHERMAN. As the gentleman from Ohio pointed out, we have a system of State-based regulation of insurance. I think that has

worked well. It was tested in the 2008 catastrophe to our economy. Most of the opposition to this bill, as far as I can see, is the fear of departing from that concept of State regulation. Mr. Bergner, and I will also address this to Ms. Davis, I understand that in the State that Ms. Davis and I share, California, they have already taken steps to provide a mechanism so that nonprofits can acquire commercial property coverage. Why can't other States simply do what California did so that we don't have to be here?

Mr. BERGNER. Thank you, Congressman. It is a good question and, when we talk about this, we talk about kind of a cascade of options for 501(c)(3)s.

So in seeking to obtain coverage somehow through the admitted market, whether it is directly from primary carriers, having RRGs do fronting arrangements with other admitted carriers to figure out how to sell products where they need to, and then from there, the surplus lines market we talked about a little bit.

Mr. SHERMAN. I am going to cut you short and go to Ms. Davis.

Ms. DAVIS. Yes.

Mr. SHERMAN. You have talked to me about this bill and its concept for a long time. California solved the problem. What is the matter with these other 49 States?

Ms. DAVIS. The reason that it works in California is because California is so geographically spread, and there are so many nonprofits that we actually have enough nonprofits there to pool together, but I don't think there is—there is maybe one other State where this would make sense. It would be irresponsible for smaller States to try to do this with just the nonprofits in the State.

Mr. SHERMAN. So it shouldn't be limited just to a small State or two?

Ms. DAVIS. It has to be—

Mr. SHERMAN. It has to be multi-State.

Ms. DAVIS. Yes.

Mr. SHERMAN. But you could very well have the States do this without the Federal Government?

Ms. DAVIS. It would not work.

Mr. SHERMAN. Okay. In our State, we have 90-some-thousand nonprofits, and 20,000 of them have insurance through these risk retention groups. Are the others able to get coverage elsewhere, or what is happening in California?

Ms. DAVIS. We have always said that there are other limited options for nonprofits for package coverage. We are talking about the absence of standalone property insurance. We cannot be the only carrier for nonprofits in the country, and we have no intention of being that.

I will tell you that across the country, we now insure in the States we are in, about 7 percent of the nonprofits, and you say that might not be a very large share. In California, it is actually 20 percent, but Berkshire Hathaway insures 6½ percent of their market. We are a very important part of this market. Most insurance companies don't insure more than that.

Mr. SHERMAN. You point out that these risk retention groups face the same kinds of regulation that you would if you are a mutual insurance company, but you are not regulated by every State in which you do business, and I understand that. If you were going

to be a mutual, it sounds like that is the one advantage you have and the cost of being regulated in every State you do business could be burdensome.

On the other hand I see that chart right in front of us, saying 35 percent of the RRGs here are in Vermont, and I don't think that is where 35 percent of the business is.

My concern is that Wyoming could have a, "hear no evil, see no evil" approach to regulation. Somebody could be domiciled there and then do business in my State.

I am going to address this to Director Lindley-Myers. What do we do to not make these groups subject to registration in all 50 States, but to have to register in those States where they do a tremendous amount of business or a substantial—over half or over a third of their business?

Ms. LINDLEY-MYERS. The issue with the bill as presented is that the non-domiciliary State doesn't have the look-see of what's going on with that particular—

Mr. SHERMAN. And that is what I am addressing. If you had the look-see, but not because they have one policy in your State but because a third of their business was in your State, would that provide enough State regulation to these organizations?

Ms. LINDLEY-MYERS. If they are going to abide by the State regulation within my State, absolutely.

Chairman CLAY. The gentleman's time has expired.

Mr. SHERMAN. Can Ms. Davis give a quick response?

Chairman CLAY. We will get to Ms. Davis. Thank you.

Mr. SHERMAN. Okay.

Chairman CLAY. Thank you.

I now recognize myself for 5 minutes.

Ms. Robinson and Ms. Davis, a Guy Carpenter study from 2017 found that nonprofits had very few options when it comes to obtaining property insurance coverage, especially small and midsized nonprofits. Can you help us understand why it is harder for nonprofits as compared to other businesses to obtain the insurance coverage that they need?

We will start with Ms. Robinson.

Ms. ROBINSON. Sure. And I want to start by—I don't want to discount the fact that there are some nonprofits, more the vanilla, very easy risk, who do obtain insurance and who do have options.

The nonprofits that we are representing and speaking for here today are those who are doing the hard work—homeless shelters, domestic violence shelters, foster care, vulnerable populations, the elderly, the mentally ill—the harder work that we all hear don't do for a living. Those are who we are representing today.

So the reason why it is harder for that subgroup of nonprofits to obtain coverage is because with these bundled programs, they have to do the liability and the property together. They are not looking at it as a separate risk. So if they say, we don't want to be subjected to, for example, in a homeless shelter, the mentally ill or some sort of claim arising out of someone who might have a mental breakdown, then, no, sorry, we can't do any of it. We won't do the property.

The reality is they want a very black-and-white, only the vanilla risk, the easier risk to insure and, but for having this other risk,

which is the option of the risk retention group, they are struggling, and I encourage the folks here today opposing this bill to get on the phone with the organizations who are on the ground, who are being subjected to the hard market, and to these challenges specifically.

Chairman CLAY. Thank you for that response.

Ms. Davis, they do provide a unique form of services which require probably some type of unique insurance coverage to help them?

Ms. DAVIS. Yes. Absolutely.

And the property insurance is just the part that we, our members, can't get access to because it is available only as a bundled package, as we say, but the liability doesn't always work for them, and I have given many examples.

And I would like to just say that there are organizations that have come to us recently. Anne Grady Services of Holland, Ohio, actually could not find any coverage. They have been operating since 1982. We were their only option. They have 400 community members who work for them. They are a large organization. Nobody would insure them.

The Children's Shelter of San Antonio, Texas, could not get anything because they were insuring foster family agency organizations.

Sun Ministries in Minnesota came to us. No one else would insure them because they work in the inner cities.

MountainTrue, an environmental organization in North Carolina, said they had been canceled twice, and they were so relieved they could finally find coverage with us.

And then, finally, Mid-Delta Community Services in southeast Arkansas had an increase of $200,000 from their insurer and they could not come up with any additional money. Their insurance broker went to 7 other carriers and got turned down. He could not find anybody to cover them.

This nonprofit then advertised in the newspaper because they were desperate for anybody to insure them, and their insurance broker found us at the last minute. They provide Head Start to 7 counties in their community, and we were the only ones that would insure them.

Chairman CLAY. And that is all about essential services that our entire community depends on.

Ms. Davis, risk retention groups currently make up a relatively small portion of the commercial liability insurance market, with only 1 percent of the total premiums. If H.R. 4523 were to become law, how much do you think risk retention groups would grow? How many more would there be?

Ms. DAVIS. I actually think that there are not many more risk retention groups that would grow, but I think the measure is the impact this would have on the nonprofit sector. So let's look at the fact that it is not 1 percent of the market, but for us, right now, we insure 7 percent of the market. In fact, we actually insure 13 percent of the nonprofit organizations in Missouri. So, there must be more of a problem there than the commissioner is aware of. We insure a very large portion of the nonprofits in Missouri.

So I think that the difference will be the impact on the nonprofit organizations. The insurance industry is not going to feel the impact of this, but the nonprofit organizations are going to be able to do their services.

Chairman CLAY. I thank you all for your responses.

And I would hope that when this hearing is concluded, the two sides could get together and find some middle ground on this issue. Help us here. Help us with this process of making sausage.

At this time, I will recognize the gentleman from Florida, Mr. Posey, for 5 minutes.

Mr. POSEY. Mr. Bergner, it has been said that allowing risk retention groups to offer property coverage to nonprofits means that the traditional insurance companies will face competition from risk retention groups. I like competition, but please explain how this might create unfair competitive disadvantages to traditional carriers and the impacts of those disadvantages. I know this is similar to another question. I am just looking for some more specifics.

Mr. BERGNER. Sure. At the end of the day, we have heard a lot of discussion about, it is a different regulatory regime but not—— it is equivalent in some way. The fact is, it is not an equivalent regulatory regime, and if it were—there has to be a reason there is staunch opposition to becoming an admitted carrier, right? So, there is a reason that regulatory regime is more preferable to operate under.

And some of the provisions of H.R. 4523, for example, that seek to address some of the potential regulatory concerns, we don't think necessarily get there. When a non-domiciliary State, per Director Lindley-Myers, wants to take a look at something or doesn't get the cooperation from the domiciled State's regulator, it has to take them to court, and it is legally questionable in many cases whether LRRA would allow for that court to find in favor of the State of domicile.

Mr. POSEY. Okay. As you know, Congress created risk retention groups and shielded them from State regulation in all States where they offer coverage to address a perceived crisis that there was when commercial firms had difficulty obtaining product liability coverage. In this attempt to expand the role of risk retention groups to property coverage for nonprofits, there appears to be no such crisis. Can you tell us about the availability currently and if, in fact, we are facing a "crisis?"

Mr. BERGNER. Sure. Thank you. We don't believe we are facing a crisis, and speaking to specifics of anecdotes, I can't do that without more knowledge about specific circumstances, but to offer my own anecdotal story about speaking to independent insurance agents whom I would note are also opposed to this legislation, they seem to have a lot of conversations with their membership and they have not reported any similar crisis when they go out into the market. They say sometimes it is difficult to find, but we can find it for them.

I would also note that the admitted market is just one of the options for 501(c)(3)s. There is the surplus lines market. There are residual risk market mechanisms like FAIR Plans in many States. I did a cursory Google search of five of them in preparation for this hearing and found commercial property standalone coverage

through these residual market mechanisms. So, there are options that would suggest—

Mr. POSEY. Okay. I have another question for you. Then, I want to go to Ms. Davis.

I have heard from an RRG that there is simply no way that they could restructure as an admitted carrier because they simply wouldn't be able to offer their products to their clients at reasonable prices but, as I understand it, your membership has a number of smaller carriers selling policies to diverse clientele many times for niche markets. How is that working for them?

Mr. BERGNER. Come on in, the water is warm. Our membership has been doing this successfully for, in most cases, over 100 years, and there are folks who write for niche markets exclusively for houses of worship and related ministries these organizations do in all 50 States.

So, there are plenty of examples of companies that have figured out how to do this successfully to the benefit of their policyholders across the country.

Mr. POSEY. Okay. Ms. Davis, did you want to comment?

Ms. DAVIS. Yes, I did. First of all, we have a special condition. We cannot become a licensed admitted carrier because we are a 501(n) organization under Federal law, and it requires us to be organized as a nonprofit under State law provisions authorizing risk-sharing arrangements for charitable organizations, not to be a licensed insurance company. So we would be bankrupt if we had—if we were able to do that.

However, I wanted to point out that this is a crisis and you are going to be hearing about it, and if you don't believe me, you will hear about it in the future. I have a statement here from Peter Persuitti. He is the managing director of Gallagher, the nonprofit practice at Gallagher. He has written—and this will be published very soon. He says, "Gallagher believes an insurance crisis is now for many nonprofits." They are a large broker. This is not a one-size-fits-all reaction to pricing in terms and the market is not hardening consistently. Certain geographic areas like the Northeast, Southeast, and Texas are experienced reduced limits as much as 40 percent rate increases and even nonrenewals.

I have another email about a conversation with a broker just today who indicated that the largest insurer of package coverage for nonprofit organizations in the country has said that they will be nonrenewing their foster care, their adoption, and all of their residential business.

Chairman CLAY. Thank you. The gentleman from Florida's time has expired.

The gentleman from North Carolina, Mr. Budd, is recognized for 5 minutes.

Mr. BUDD. Thank you, Mr. Chairman.

Mr. Bergner, again, thank you for your time, and I thank each of you for being here.

Is there any real evidence that a high percentage of nonprofits across the country that are uninsured or are shutting down are failing because of the high cost of insurance?

Mr. BERGNER. We have not seen any compelling evidence to suggest that is the case.

Mr. BUDD. Do you think that this is perhaps just a way for a less regulated entity to sell a product at a cheaper price?

Mr. BERGNER. That would be the result of the pursuit of this particular remedy in H.R. 4523, yes.

Mr. BUDD. So that really wouldn't be a very level playing field then, would it?

Mr. BERGNER. No.

Mr. BUDD. Let's talk about McCarran-Ferguson for a second, which is jeopardized by this bill being considered.

This is taken from the NAIC website, "The McCarran-Ferguson Act declared that the continued regulation and taxation by the several States of the businesses of insurance is in the public interest, and its silence on the part of the Congress should not be construed to impose any barrier to the regulation or taxation of such businesses by the several States."

It affirmed from then on that, "No act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance."

So in my view, if there was a crisis, then State regulators could step in to reform how State-admitted insurers sell both property and liability coverage and they could make these products even more accessible. So we should not create a nationwide loophole to allow these risk retention groups to do something that is best handled at the State level, and that would also jeopardize the State system of insurance, which is, by the way, the gold standard of the world.

Mr. Bergner, much has been said today about a Guy Carpenter study taken over 3 months in the summer of 2017 which looked at Insurances Service Office (ISO) filings, concerning the availability of standalone or monoline policies coverage of commercial property and auto coverage.

What I don't think has been talked about nearly as much as it should be is the fact that the folks asking for this study to be performed did so in search of the answer that they received. Just like H.R. 4523, in my mind, this question was a solution in search of a problem.

Mr. Bergner, would you agree with my assertion here?

Mr. BERGNER. As I mentioned before, it is hard for me to offer a real assessment of this study in that there has only been a two-page document that was released with sort of the conclusions. I would admit I found some of the language in that document oddly specific, and so I would want to dig in a little bit to the search parameters of this survey, to understand the underlying assumptions and the data that was produced. If the language that was used was of a type used by 501(c)(3) organizations, I don't understand exactly what that means or how you would define a search by that. And so, I would want to understand a little better before I would be eager to rely on that as the basis for changing Federal statute.

And, regardless, the survey does not discuss, I think, perhaps a more interesting question that could be asked along the lines of, how are the other 1.2 million 501(c)(3)s transferring their risks successfully today in the market?

This doesn't address that or any of the various options that one might have outside of monoline coverage in an admitted market.

Mr. BUDD. Very good.

Mr. Chairman, I yield back the remainder of my time.

Chairman CLAY. I thank the gentleman for yielding back.

And I would like to thank all of our witnesses for your testimony today.

As I mentioned earlier, I would love to see both sides leave this hearing and come up with a working document to present to this committee, because I have a feeling that this issue is not going to go away.

Hopefully, we can find middle ground on the two sides and realize that this is an important issue, and we do need to take care of our nonprofit community. So, I would hope that you could get with the House sponsor and find a way forward.

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

This hearing is now adjourned.

[Whereupon, at 3:45 p.m., the hearing was adjourned.]

A P P E N D I X

January 29, 2020

Statement of

Jon Bergner

Assistant Vice President – Public Policy & Federal Affairs

On Behalf of the

National Association of Mutual Insurance Companies

to the

United States House

Committee on Financial Services

Subcommittee on Community Development, Housing, and Insurance

Hearing on

Examining the Availability of Insurance for Nonprofits

January 29, 2020

The National Association of Mutual Insurance Companies (NAMIC) is pleased to provide comments to the U.S. House Financial Services Committee Subcommittee on Community Development, Housing, and Insurance on the availability of insurance for nonprofits.

NAMIC membership includes more than 1,400 member companies. The association supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC member companies write $268 billion in annual premiums.

Introduction

In 1752, Benjamin Franklin started the country's first successful mutual insurance company, helping found the property/casualty insurance industry in the United States. Since that date, the U.S. insurance industry has by and large operated under a state-based regulatory scheme that has endeavored to protect consumers and provide a stable insurance marketplace for insurers to do business. Further, at the federal level, under the McCarran-Ferguson Act in 1945 and subsequent legislation, insurance regulation has been explicitly left to the states to handle with a few notable exceptions, including the creation of Risk Retention Groups.

Risk retention groups (RRGs) have played a role in providing both product and commercial liability insurance in niche markets across the country since their creation over 30 years ago. Today, a tiny fraction of the RRG community is seeking to expand its statutorily allowed insurance offerings into other areas to include commercial property coverages and auto physical damage, the assertion being that there is a demonstrable failure in these markets and crisis of availability for 501(c)(3) organizations. NAMIC members are community leaders across America and support the work that many 501(c)(3)s do in our communities throughout the nation. However, we do not agree that a market crisis exists and believe that an expansion of the scope of RRGs would be unnecessary, inappropriate, and place consumers at more risk.

In short, NAMIC opposes H.R. 4523, the Nonprofit Property Protection Act, for four key reasons:

1. No national insurance availability crisis exists that would warrant circumventing long standing state insurance regulations
2. Because no crisis exists, allowing RRGs to offer commercial property and auto insurance would serve only to create an unlevel regulatory playing field and a competitive advantage for a handful of RRGs in this market
3. The RRG regulatory regime is substantially different and less rigorous, undermining consumer protections and potentially placing 501(c)(3) policyholders at risk
4. States have already created more tailored and effective risk-transfer mechanisms and alternative solutions for 501 (c)(3)s

No National Commercial Property Insurance Availability Crisis

In 1986 Congress passed the Liability Risk Retention Act in response to what was perceived as a severe disruption in the commercial liability insurance market. This disruption was largely driven by a sharp uptick in the mid-1980s in litigation and subsequent over-sized verdicts that led to a drastic increase in both liability claim frequency and severity. What followed was a sharp contraction in the market for these products due to the lack of tort reform measures to curb abuses.

The LRRA provided a narrow preemption of the state insurance regulatory system in order to allow RRGs to offer liability insurance coverage across the country in an attempt to alleviate this market disruption. RRGs are group self-insurance mechanisms that are licensed to underwrite product and commercial liability insurance for their owners. By statute, owners of an RRG must be engaged in similar business activities or exposed to similar risks. The most notable feature of this narrow preemption is that it allows RRGs to obtain a charter from a single state and then exempts them from most regulation by any other state in which they operate, other than the chartering state.

This relaxed regulatory regime was designed to address a very specific market disruption specifically for liability insurance. Therefore, any expansion of the LRRA into other lines of insurance would need a comparable – and demonstrable – market breakdown. H.R. 4523 seeks to expand the scope of RRGs to allow them to write commercial property coverages despite there being no nationwide commercial property insurance crisis that needs to be addressed. We fundamentally disagree with the assertions by proponents of this legislation that non-profits are unable to acquire commercial coverages in the private market.

According to the Urban Institute's National Center for Charitable Statistics latest numbers, there are at least 1.56 million non-profit organizations in the United States[1] and according to Nonprofit Quarterly, roughly 78% of them are 501(c)(3)s.[2] While we can assume that not all non-profits necessarily have commercial property insurance needs, surely, it would be far more obvious if there was a market crisis of availability happening nationwide for some significant percentage of the over 1.2 million 501(c)(3)s. As the National Association of Insurance Commissioners stated in a recent letter addressed to Chairwoman and Ranking Member of the

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[1] These 1.56 million organizations comprise a diverse range of nonprofits, including art, health, education, and advocacy nonprofits; labor unions; and business and professional associations. This broad spectrum, however, only includes registered nonprofit organizations; the total number of nonprofit organizations operating in the United States is unknown. Religious congregations and organizations with less than $5,000 in gross receipts are not required to register with the IRS, although many do. These unregistered organizations expand the scope of the nonprofit sector beyond the 1.56 million organizations this brief focuses on https://nccs.urban.org/publication/nonprofit-sector-brief-2018#the-nonprofit-sector-in-brief-2018-public-charites-giving-and-volunteering

[2] Also, in 2017 alone there were roughly 80,000 approvals of non-profit, 501(c)(3)s. https://nonprofitquarterly.org/how-many-nonprofits-1023ez/.

House Financial Services Committee, "we are not aware of a crisis in the commercial property insurance market today."[3] It defies logic that the state insurance commissioners, who have historically been the front lines of responding to insurance market disruptions, would be completely unaware if what would have to be such a sizable number of non-profits were unable to find the insurance coverages they needed.

Taking the example of the only RRG NAMIC is aware of that would avail itself of H.R. 4523 if it were to become law, the Alliance of Nonprofits for Insurance has, at most, 20,000 non-profit policyholders[4] that operate in 32 states. The implication of the arguments made by ANI in arguing that there is a crisis of availability for commercial property coverage for non-profits generally seem to be threefold:

1. All 20,000 of ANI's associated non-profits who need property coverage are uninsured or close to closing their doors due to the cost of insurance
2. An enormous percentage of the other 98.3% (1,210,000) of 501(c)(3)s which have commercial property insurance needs are uninsured or close to closing their doors due to the cost of insurance
3. Non-profits in the other 18 states where ANI does not do business either do not have a similar availability problem or would not benefit from the proposed solution of H.R. 4523

Again, logic would dictate that given the implications above, the sheer magnitude of the problem would have to be obvious to everyone (and it is not) if there was indeed an availability crisis in the commercial property insurance market.

Further, in previous testimony and other public statements, proponents of H.R. 4523 have conceded that non-profit organizations are able to secure commercial property insurance in the traditional, admitted insurance market. This fact alone belies the notion that the U.S. has a commercial property availability problem. Some suggest that this property coverage somehow "doesn't count" because it is typically bundled into a policy that includes liability insurance.[5] Bundling of products is typically a more efficient and cost-effective way of selling insurance products – and, it should be noted, exactly what proponents of H.R. 4523 would like to be able to do – and objecting to this form of offer is not compelling evidence of a market crisis.

In short, NAMIC believes there is no evidence of an availability crisis in the commercial property markets for 501(c)(3)s that would necessitate expanding the LRRA.

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[3] Letter from the NAIC, addressed to Reps. Maxine Waters and Patrick McHenry, dated October 23, 2019, 'RE: The Nonprofit Property Protection Act, H.R. 4523.'
[4] Based on number of members listed at the group-level by the Nonprofit Insurance Alliance, of which ANI is a subsidiary: https://insurancefornonprofits.org/
[5] That property coverages are regularly bundled with liability coverages is a particularly interesting objection, given that it would seem to undercut the entire rationale for continuing to allow RRGs to exist at all.

H.R. 4523 Creates an Unnecessary Regulatory Loophole

The Nonprofit Property Protection Act seeks to allow RRGs to offer commercial property insurance to non-profits when, as we have seen, there is currently no shortage of available and appropriate products in the market. The predominant reasoning behind the unique regulatory structure of RRGs is to facilitate the offering of insurance products in areas of the market in which conditions have made it difficult to do so. But how were RRGs designed to accomplish this?

Specifically, the LRRA provides RRGs with one distinctive advantage over traditional insurers: a reduced regulatory burden. Since RRGs are only really regulated in the state in which they are domiciled, they do not face the same burden or costs associated with multi-state solvency and consumer protection regulations. This was understood to be the point from the beginning. During a July 17, 1986 Senate hearing on the LRRA Sen. Bob Kasten noted:

> The measure before the Senate today amends the 1981 act to make it easier for others to form collective purchasing groups and risk retention groups for general liability insurance, without imposing on them conflicting requirements in each state which they operate.[6]

Though arguments have been made that there are other efficiency gains to be had from the RRG structure, multiple studies have failed to find evidence that any efficiencies found were due to anything other than the reduced regulatory burden.[7] In other words, RRGs have no special mechanism or ability to make risks any less risky and thereby offer a lower-priced product.[8] The only cost-savings come from regulatory compliance savings and tax treatment.

And this regulatory benefit is significant. Professor Tyler Leverty of the University of Wisconsin has estimated that the structure of RRGs reduces the cost of compliance by 26% in comparison to similar traditional insurers.[9] RRGs were given this advantage for one reason, which was to ensure products were available in high risk product lines that had availability and extreme affordability issues. However, the commercial property insurance market does not fit this description. Allowing RRGs to sell commercial property coverage already offered in the admitted markets would give them an unfair competitive advantage over traditional insurance companies that abide by the regulatory standards and consumer protections of each state in which they operate.

Ultimately, if there is an interest among RRGs in expanding into other, admitted lines markets, there is an option that some have already utilized which avoided an unfair and unlevel playing

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[6] Testimony of Wisconsin Se. Bob Kasten, July 17, 1986, *Hearing on Risk Retention Amendments*, 132 Cong Rec S 9228.
[7] See, for example, Born and Boyer, 2011, and Born, et al. 2009.
[8] Assuming the proper pricing of a risk to avoid adverse selection and maintain solvency.
[9] Leverty, Tyler. "The Cost of Duplicative Regulation: Evidence from Risk Retention Groups," 2012.

field while ensuring consumers are protected: reorganize as a traditionally admitted insurance company.

A Less Rigorous Regulatory Regime

The state-based insurance regulatory system in the United States is robust and rigorous, with a central focus on consumer protection. Through major world wars, depressions, and the recent financial crisis the U.S. system of insurance regulation has proven effective and ultimately adaptable. Despite some of the challenges and costs associated with state regulation, it has overseen the flourishing of a highly competitive industry – as one example, there are over 2,600 property/casualty insurance companies across the country. Each state is empowered to determine the best method to regulate their insurance industry based on factors that could be inherent to that state, which is particularly true when it comes to property insurance. States may encounter different situations and perils that lead them to institute various regulations and consumer protections that other states do not find necessary. This, in part, allows for that central focus to be on consumer protection.

As has been previously noted, RRGs are allowed to operate nationwide, but they are only substantially subject to the regulations of the state in which they are domiciled. By definition this means that there is less oversight with fewer regulators. The consumer protections that are built into other aspects of the state-based regulatory system are also lacking under the RRG regulatory regime. For example, RRGs generally do not have to file rate and form filings – a key check on improper market conduct – and they may use GAAP accounting principles as opposed to statutory accounting principles, SAP being widely understood to be more conservative in terms of investments and reserving requirements. In the end, attempts by state regulators to tailor the regulatory conditions in their state would not apply equally to all companies operating there.

These reductions in consumer protections are a concern. But an even more fundamental component of the regulatory system for traditional insurers that protects policyholders is the mandatory participation in all state guaranty funds. Every state has some version of a guaranty fund which is an industry-funded sponsored backstop to protect policyholders in the event of a failure. In the case of an insurance company insolvency in which the assets of the company are insufficient to cover claims, policyholders have recourse through their state guaranty fund. While guaranty funds are state sponsored, they are funded by assessments on traditional insurance companies – only funds from the private sector are utilized. As a result, insurance companies inherently desire adequate regulation to ensure safety and soundness because ultimately, they would pay the price for the failure of an insolvent insurance company.[10] Importantly, RRGs are legally excluded from the guaranty fund system and do not have to pay any assessments due to an insurer failure.

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[10] Potential insolvency concerns are why many admitted insurers would be wary of even allowing RRGs to participate in Guaranty Funds.

Given the above, it should be both unsurprising and troubling that, according to the NAIC, RRGs have historically seen a higher insolvency rate when compared with admitted insurers.[11] Unsurprising because the regulatory regime is less rigorous, and troubling because a higher rate of insolvency would mean greater risk to 501(c)(3) policyholders – who would not be protected by guaranty funds – especially if RRGs were allowed to expand to offer commercial property insurance.

Allowing RRGs to Offer Commercial Property Unnecessary

NAMIC does not see evidence that there is a national availability crisis in the commercial property insurance market for 501(c)(3)s. There are insurance coverages – including property coverage – available and marketed directly to these organizations. Even if one were to stipulate an availability issue – which we do not – it does not mean that passage of H.R. 4523 and the expansion of the RRG mandate is the only, best, or even an appropriate remedy. Given that NAMIC's membership contains numerous, smaller mutual insurance companies that write in multiple states for niche markets, we would strongly reiterate that reorganization as a traditionally admitted insurance company is self-evidently an option for those entities not satisfied with the statutory limitations on their offerings.

Proponents of the legislation tend to focus on arguments that are carefully couched with very specific language, i.e. there are no traditional insurance company filings for standalone commercial auto or property coverage "of the type" used by 501(c)(3) non-profits. In addition to simply "not counting" commercial property coverages offered in a combined product, this argument ignores the myriad other options and mechanisms through which a non-profit could effectively transfer its risk. There exist market mechanisms and transaction structures such as fronting arrangements that can be accomplished with admitted insurers.

If a non-profit has real difficulty in finding the exact coverage it desires in the admitted market, it can have a broker go to the surplus lines market. The surplus lines market offers coverages for unique risks, one type of which are those for which admitted carriers do not offer a filed policy form or rate. Importantly, surplus lines companies are regulated by the domiciliary state and the placement of the coverage is regulated by the home state of the insured. This provides an option for 501(c)(3)s that provide a greater level of regulatory protection than would additional lines of coverage being offered through an RRG.

In the event that an organization cannot find coverage in either the admitted or the surplus lines market, many states have residual market mechanisms to which it could go to acquire a policy. A good example of this type of mechanism is a state Fair Access to Insurance Requirements (FAIR) Plan. FAIR Plans are state programs sometimes subsidized by private insurance companies. These plans often provide insurance to people that cannot otherwise find

[11] https://www.naic.org/documents/government_relations_190116_rrg_expansion_issue_brief.pdf.

coverage on their property due to being a particularly high risk or other related problems. A cursory glance at a sampling of FAIR plan websites for Missouri, New York, Ohio, Washington State, and Washington D.C. all list a standalone commercial property coverage available through the plans.[12] These markets of last resort can provide needed coverage for those truly unable to find coverage in the private market.

Finally, in the event an organization is in a state which either does not have a FAIR plan or the plan does not provide standalone commercial property coverage, there are options to work directly with the state regulators and legislatures to address any localized issues of coverage availability. Obviously, states have the power to address coverage gaps through mechanisms like FAIR plans, or, in the case of California, through other risk-pooling mechanisms that can be created to service specific segments of the non-profit community. And per the NAIC, state insurance commissioners are ready and willing to work with non-profit policyholders having difficulty obtaining needed property coverages to find tailored solutions.[13]

Conclusion

It is NAMIC's view that changing federal law and further preempting state law by allowing RRGs to provide commercial property coverage is unnecessary, unfair, imprudent, and inappropriate, for all of the reasons outlined above. We remain supportive of facilitating the acquisition of needed property coverages for non-profits, but staunchly opposed to utilizing the mechanisms of H.R. 4523 and RRGs to do so. We appreciate the opportunity to offer our comments to the committee today.

[12] https://www.dcpif.org/; http://missourifairplan.com/coverages/; https://www.ohiofairplan.com/Public/Coverages.aspx; http://www.nypiua.com/commpol.html; https://www.wafairplan.com/customers/;
[13] NAIC Letter to Rep. Waters and McHenry, October 2019.

Testimony of Pamela E. Davis

Founder, President and CEO
Alliance of Nonprofits for Insurance, Risk Retention Group
Santa Cruz, CA

The Subcommittee on Housing, Community Development and Insurance
The Committee on Financial Services
United States House of Representatives

Hearing:
"Examining the Availability of Insurance for Nonprofits."
January 29, 2020, 2:00P.M.

Mr. Chairman, Ranking Member Stivers, and Members of the Subcommittee:

Thank you for the opportunity to testify as part of the Subcommittee's Hearing on "Examining the Availability of Insurance for Nonprofits." in support of H.R. 4523, Nonprofit Property Protection Act, which would permit a certain subsection of established risk retention groups (RRGs) to offer property and auto physical damage insurance to their members. I am the founder, president and CEO of the Nonprofits Insurance Alliance, which includes Alliance of Nonprofits for Insurance, Risk Retention Group (ANI) on whose behalf I am testifying today.

The Nonprofits Insurance Alliance currently insures more than 20,000 nonprofit organizations across the country. ANI is a 501(c)(3) tax-exempt nonprofit insurance company governed by its 501(c)(3) federally tax-exempt nonprofits, including animal rescues and shelters, volunteer centers, group homes for children, teens and the disabled, art programs, library associations, foster family agencies, Meals on Wheels, United Way, Goodwill, Boys and Girls Clubs, veterans assistance programs, charter schools and others. Member-insureds of ANI include community-based nonprofit organizations such as Veterans Community Project in Missouri, Ohio Association of Food Banks, Michigan Coalition for Deaf & Hard of Hearing People, Colorado Black Health Collaborative, New York Cancer Center, Big Brothers Big Sisters of Puget Sound, Guest House of Milwaukee, Boys and Girls Clubs of South Central Texas, Paws for Purple Hearts, Broward House in Florida, California Housing Foundation, National Alliance for the Mentally Ill, People Assisting the Homeless in Los Angeles, National Disaster Search Dog Foundation, Adult Foster

Homecare Association Foundation of Hawaii, Discovery Center of Idaho, and Humane Society of Southeast Texas. It has grown from initial capital grants of $10 million from the David and Lucile Packard Foundation and the Bill & Melinda Gates Foundation to an insurance company rated A (Excellent) by A.M. Best, insuring nearly 10,000 nonprofits in 31 states and the District of Columbia.

In my testimony today, I will provide a description of the problem the Nonprofit Property Protection Act would solve for small and mid-sized nonprofits and explains why there is a particular insurance market failure affecting this group. I will also briefly describe the research that has been conducted to discover whether there are other sources of standalone property, auto physical damage, and business interruption insurance available in a form applicable for small and mid-sized nonprofits who are members of an RRG.

Without any cost to government, the Nonprofit Property Protection Act will:

- Increase capacity, choice, and market options for property and casualty insurance for small and mid-sized 501(c)(3) nonprofit organizations;
- Create a lasting solution for RRG members who are small and mid-sized nonprofits and presently unable to find market-based solutions for their property and auto physical damage needs;
- Lower the cost of risk for RRGs owned and governed by nonprofits, by allowing them to have a broader spread of risk across different types of coverage; and
- Enable these RRGs to provide stable coverage and pricing for both liability and other lines of coverage, such as property, to insulate these small community-serving organizations from the cyclical nature of the larger commercial insurance market.

A. Liability Risk Retention Act of 1986

ANI owes its existence to the Liability Risk Retention Act (LRRA) of 1986. In the mid-1980s, the insurance industry found itself in financial difficulty and dramatically reduced its capacity for providing insurance. Nonprofits were particularly hard hit by the capacity crisis as they faced huge rate increases, mass cancellations of coverage, and unavailability at any price of entire lines of insurance, as commercial insurers abandoned these markets. To end this crisis, Congress passed the 1986 Amendments to the LRRA, which expanded the lines of liability insurance that RRGs could offer to their member-owners in order to protect these consumers that proved the most difficult to insure in hard markets.

In 2020 certain nonprofits are once again finding it difficult to obtain even "package" policies from commercial carriers. Several prominent commercial insurance companies that long competed for nonprofit business have announced that they are shutting their nonprofit programs and/or drastically reducing their willingness to offer coverage—particularly to child-serving and animal rescue organizations. Considering the headlines around sexual abuse and sexual harassment, many child-serving nonprofits are finding it difficult to obtain adequate amounts of sexual abuse liability insurance coverage. This is putting additional pressure on nonprofits' own RRGs who are working to fill the gaps left by departing commercial insurance companies.

B. History of ANI's Service to Nonprofits

ANI is an unlikely success story whose future is now in jeopardy without the Nonprofit Property Protection Act. ANI's story is about how 20,000 small organizations, the vast majority of which have annual budgets of less than $1 million, have come together to jointly insure each other and develop specialized risk management tools through ANI and its California affiliate, so that they may serve our communities more safely and efficiently. All of the insurers in the Nonprofits Insurance Alliance Group, including ANI, are themselves 501(c)(3) nonprofits.

When I speak of small and mid-sized nonprofits, I mean community-based organizations in our neighborhoods that work with the most vulnerable among us. They are homeless shelters and programs for those with Alzheimer's, victims of sexual abuse and the developmentally disabled. They are animal shelters, adoption agencies, foster family agencies, elder care services, food banks, alcohol abuse clinics and after-school art programs. They are foundations raising money for diabetes, heart disease and cancer research, and many others.

These little nonprofits got into the business of insurance because the commercial carriers walked away from them. Nonprofits never wanted to be in the insurance business, but were forced into it to be able to continue to serve our communities. In fact, when I was in the process of raising money from the Ford Foundation to capitalize the first organization in our group, the Ford Foundation told me that they really didn't want nonprofits to get into the "insurance business." They commissioned a third-party to conduct a study and told me that I was not going to get a dime unless the study showed that because of the

specialized nature of the risk, and the limited appetite for this sector for most insurance companies, the only way for nonprofits to gain long-term stability and protection was to get into the insurance business. The study was conclusive and we got the funding.

Why would thousands of nonprofits choose an RRG over a commercial insurance company? Why would 95% of them stay with us year after year? Why would hundreds of brokers recommend an RRG for their nonprofit clients? I can tell you, it is not for higher commission or contingent commission! And, if you are familiar with our financials and our A rating from A.M. Best, you know it is not because of prices that are unsustainably low. It is our laser focus on meeting the specialized insurance needs of these organizations, providing stability, and supporting their risk management needs. Virtually none of these organizations have a line item for "risk management" in their budgets. Virtually no foundation or government is going to fund that. So, we have found a way to efficiently be the collective "risk management" department for thousands of nonprofits by imbedding that cost in the price of insurance.

The mission of nonprofits is to enhance their communities, not hurt them. We help them to conduct their work more safely and efficiently and in the process, fewer people get injured. We offer unlimited and free driver training, both in person and online, for our member-insureds. We have three staff employment attorneys, whose only role is to provide help and advice for these nonprofits who have, on average, 15 employees. Organizations that small have no one on staff to advise them on complex employment laws. We do that for them on an unlimited basis and completely free of charge. It is simply not efficient for commercial carriers, which insure many types of risks, to focus like we do on this special group.

We have heard concerns that an RRG cannot be sufficiently strong or well-regulated to provide property insurance. Let me remind you of our history. ANI has an affiliate charitable risk pool in California which I started in 1989 with a $1 million loan for capital, and began offering $1 million liability policies. We had 300 small member-insureds and $1 million in premium at the end of our first year. We were the first to offer an affirmative sexual abuse policy, in contrast to the "silent" policies being offered by commercial carriers that allowed them to decline many claims, leaving nonprofits completely exposed. The only infusion of additional capital we have received in our history is $10 million in grants from the David & Lucile Packard Foundation and the Bill & Melinda Gates Foundation to allow us to create ANI in 2000. Through insuring organizations deemed "uninsurable" by the commercial industry, our two

affiliates have generated as a group more than $200 million in earnings from operations that is now our surplus and we have given an additional $44 million back to nonprofits in the form of dividends. If commercial insurers had been serving the small to mid-sized nonprofit market well, we would never have been able to succeed as we have.

ANI adds another option, primarily for the small to mid-sized organizations whose insurance agents frequently have limited markets to find insurance for their nonprofit clients. ANI is governed by nonprofits themselves through an elected board of directors representing the members. Because ANI is an RRG, we have been limited to writing only liability lines of insurance, which typically have long-tail liabilities that may take a long period of time for the claims to be settled. Even though we have handled the most difficult of risks, such as sexual abuse and professional liability, with no ability to balance the higher risk of these long-tail lines with short-tail property insurance, we have thrived as evidenced by our financials and our A.M. Best rating of A (Excellent).

C. Why Insurance Companies are Reluctant to Insure Nonprofits

During the insurance crisis, most commercial insurers did not believe that they could profitably insure the complex risks of nonprofits like vans full of kids driven by volunteers or the risk of caring for kids who had been sexually abused; but, most commercial insurers didn't stop there. They banned all 501(c)(3) nonprofits from their underwriting appetite completely.

Most commercial carriers specifically exclude 501(c)(3) nonprofits from their underwriting appetites even today; and, because of the specialized risks presented by these organizations, that position may actually be a prudent thing for many, if not most commercial insurers. The 501(c)(3) nonprofit sector is a "people-serving" sector. As part of the work of this sector there are millions and millions of human interactions every day, may with those who are most vulnerable. Every day these nonprofits care for foster children, for emotionally disturbed children in group homes and for fragile elderly in their homes or in communal living environments. They provide services to help the homeless, those with mental health issues and parolees try to find a better life. There is no cookie cutter nonprofit. They exist to serve their communities in whatever they believe the most effective way possible.

Also, most insurance companies do not insure nonprofits because to do so they would have to develop special forms and expertise for the exposures that are unique to nonprofits. Nonprofits are the only sector of our economy that uses volunteers. In fact, nearly fifty percent of the nonprofits insured by the Nonprofits Insurance Alliance are so small that they do not have paid staff, only volunteers. These volunteers work with children, fragile adults and hurt and injured animals. They supervise field trips and overnight camping adventures, including driving vehicles full of people, and do much of the work that paid employees would do in a small business. In many states, volunteers are not covered by workers compensation. This makes the relationship of a volunteer different from an employee and requires an insurance company to evaluate and price the exposures of a nonprofit differently. Add to this the heightened profile of sexual abuse and the many states that have lengthened statutes of limitations and the insurance companies willing to insure nonprofits continues to shrink. Since most of these nonprofits are very small, few insurance companies consider it a profitable undertaking to develop the special policies and expertise required to insure nonprofits at all, especially because they tend to be very small premium accounts. And, if they are among the dozen or so insurance companies willing to offer insurance to small and mid-sized, they certainly aren't interested in selling just a part of the policy as standalone property, further reducing the overall premium of the account. Add to this the fact that not all of the carriers that will insure a nonprofit offer the coverage in all states or work with brokers and agents who do not place a minimum amount of business with them. The result is that many brokers and agents, especially small agents in rural areas, may have only one or two carriers who will entertain a 501(c)(3) nonprofit risk—and that only on a package and surplus lines basis.

D. Examples of Nonprofits Inability to Obtain Insurance from Commercial Insurance Companies

Any interruption in nonprofits' ability to purchase appropriate liability and property insurance can undermine efforts to serve community and thwart the progress they have achieved over decades. Insurance coverage is a bit like electricity. You need it to be there consistently, without gaps. And, you only notice it when it is not available.

Only one carrier provides the one-half of a property BOP form that small nonprofits who are members of their own risk retention groups need. However, even for the package coverage, nonprofits already have a very limited number of commercial insurance companies that will insure them. Nonprofits are sort of like the canaries in the coal mine, being the first to get hit with coverage restrictions and price increases as an

insurance market begins to harden. When even a few of the insurance options available to nonprofits increase their prices dramatically or reduce the coverage they are willing to offer, it becomes a crisis. That crisis does not need to affect all types of nonprofits, but as we are seeing in the current market, it will likely have an effect on specific types of nonprofits. In the present market, we see insurance options restricting particularly for foster family agencies and other child-serving nonprofits, as well as animal rescues, low-income housing, advocacy and, in some cases, transporting clients.

Below are a few real-life examples of the difficulties have getting affordable insurance:

Anne Grady Services in Holland, Ohio provides services to children and adults with intellectual disability by assisting with daily living skills since 1982. They provide community homes, supported living, day services, respite, community trust services and outpatient therapy to hundreds of clients and employment to nearly 400 community members. They were nonrenewed by a large commercial carrier with a specialty in nonprofit organizations. Their insurance broker was unable to find any other insurance company that would offer coverage. When the insurance broker requested that the large commercial insurance company provide an extension of coverage to give him more time to find another option, the company refused. At the 11th hour, the broker learned about a risk retention group for nonprofits that provided the insurance this organization needed to be able to continue its nearly 40 years of service to the community.

The Children's Shelter in San Antonio, Texas provides a comprehensive array of trauma-informed care services for children, youth, and families, that include emergency shelter care, therapeutic foster care for children and youth, mental healthcare for children and families, child neglect and abuse prevention, and community-based care to transform the foster care experience for children and youth. One of their goals is to break the cycle of child abuse and neglect. Despite having an admirable record of safety for 15 years, at renewal their commercial insurance company charged such an exorbitant rate for the insurance for the foster care services that they had to scramble to find an alternative. They were able to secure the insurance they needed from a risk retention group for nonprofits

Sun Ministries in Missouri does the hard work to repair, rebuild, and restore inner cities. Community revitalization means creating a "bankable" neighborhood where residents can get loans to improve and

buy housing. Before banks are willing to lend, they want to make sure other factors, such as insurance that covers organizations engaged in the neighborhood, are in place. Without insurance, any effort at revitalization is in jeopardy. They went three years without insurance before they found a risk retention group willing to insure them. They were rejected from the major insurers. Now, the organization is expanding into Oklahoma, where the risk retention group is unable to help because the single insurance company offering the property insurance they need in Oklahoma does not offer property in Oklahoma and the risk retention group he relies on is prohibited by federal law from offering it. Without access to this insurance, Sun Ministries will be operating to improve the condition of local residents of economically impoverished areas—at the risk of losing everything to a preventable crisis, like an insurance claim.. H.R. 4523 would correct this problem and allow the risk retention group that insures Sun Ministries for liability insurance to also protect them with property insurance.

Julie Mayfield, co-director of **MountainTrue**, a small nonprofit focused on environment preservation in **North Carolina**, said this in a recent article published in an online magazine, *Blue Avocado*, "One of the biggest challenges and financial burdens that nonprofits currently face is getting and keeping commercial liability and property insurance—insurance that many businesses take for granted. Like any business, we need commercial insurance to ensure we can do our work responsibly and to protect our volunteers and our property. However, over the 11 years I have led MountainTrue we have twice had our insurance cancelled though we never made a claim under either policy." It is now happily insured by a risk retention group.

Mid-Delta Community Services started in 1966, is headquartered in Helena, **Arkansas** and meets the needs of the low-income population in a four-county area. Through the Community Services Block Grant Program, Mid-Delta provides services including employment, transportation, education, counseling, income utilization, emergency services, community projects for children and adults, food and clothing to families who are victims of house fires, and other community related activities. It operates Head Start Centers in seven locations across three counties. It provides essential transportation for some of the area's most vulnerable through the use of 62 vehicles, mostly vans. This April one of our nation's largest insurance companies increased their renewal premium on short notice by $200,000. Seven other insurance companies declined to even offer a quotation for coverage. At the last minute before their existing coverage expired, their insurance broker learned about a risk retention group for nonprofits that,

on short notice, provided them the coverage they need. On becoming a member-insured of this risk retention group, Mid-Delta readily accepted the offer of assistance of the risk retention group to augment its driver training program to work together to mitigate future claims. A grateful broker included this in an email to the CEO of the risk retention group, "Your company will allow the nonprofit to continue serving the poorest counties in the United States. You are a blessing in disguise in East Arkansas!"

E. RRG Regulation

When it passed the Risk Retention Act, Congress recognized that, because of their very narrow class of business and overall market size, RRGs would not have adequate resources to be licensed and admitted in all states.

These RRGs typically have a relatively small amount of premium in any one state because they can only insure liability and only for a very small subset—their members– which are all part of a narrow group of related businesses. This narrow focus and small premium potential makes it inefficient and not feasible to support a regulatory compliance function for their members across 50 states for these specialty RRGs. The ingenious solution devised by Congress was a hybrid form of regulation – licensing in one state and registration in all others.

This hybrid approach respects the state-based regulation of insurance while introducing efficiencies to make it possible for industry-specific associations to create insurance companies to provide virtually the same specialized liability insurance and loss control to their members in all 50 states.

Over the past 30 years, it has become clear that different regulation, as it relates to RRGs, does not mean inferior regulation. Congress provided different regulation for RRGs because of the nature of the risks they are insuring and the limited market available to them in any one state. RRGs insure only commercial business. They write no personal lines and insure only their member-owners. They offer essentially the same specialty insurance products in all 50 states. They focus on only one type of business and develop highly-specialized underwriting, claims handling and loss control products specifically for that one business group.

The same Risk-Based Capital (RBC) system that applies to 50-state admitted insurance companies applies equally to RRGs. NAIC's own website indicates that RBC "alerts regulators to undercapitalized companies while there is still time for the regulators to react quickly and effectively."

The Model Risk Retention Act, effective January 2012, requires all states to regulate RRGs uniformly. Furthermore, effective in January 2017, new governance standards adopted by the National Association of Insurance Commissioners (NAIC) require states that regulate RRGs to comply with uniform standards for governance. The proof of the success of the regulatory structure for RRGs is in their track record of nearly 35 years. According to the National Association of Insurance Commissioners' (NAIC) website, "RRGs are treated as multi-state insurance companies and are subject to NAIC accreditation standards, albeit modified to suit the unique nature of RRGs. The NAIC website goes on the say that "few RRGs, if any, are required to submit rate and for filings--rates are typically based on an actuarial analysis of the membership, and one of the advantages of captives, as noted with pure captives [of which RRGs are one type], is the ability to manuscript the policy to suit the needs of the membership."

In December of 2019, the Risk Retention Group (E) Task Force of the NAIC recently adopted two documents *Best Practices—Risk Retention Group* and *Risk Retention Groups: Frequently Asked Questions*. Those documents are attached to this testimony as Appendix A.

F. Nonprofit RRG Members Need Standalone Property Insurance

Present law prohibits RRGs from offering their member-owners property insurance. If a nonprofit wishes to purchase property insurance or auto physical damage insurance, it must purchase it from a commercial insurance company, if available, in a "package" policy. For small and mid-sized nonprofits, commercial insurance companies do not sell the needed standalone property and auto physical damage coverage without simultaneously requiring the purchase of liability insurance. That is, these small nonprofits must purchase the liability insurance and the property insurance together as a package, somewhat like having to purchase a internet/tv/phone triple play plan.

By federal law, as an RRG, ANI is allowed only to offer liability insurance to our member-insureds. When insurance brokers and agents attempt to help nonprofit members of ANI purchase property

insurance to go along with the liability insurance provided by us, they are told that the property is only sold if the liability is sold with it by that same commercial insurance company.

The unavailability of standalone property insurance for nonprofits is not related to a general shortage in property insurance capacity. Instead the Nonprofit Property Protection Act is about a specific type of coverage—standalone property and auto physical damage policies for small 501(c)(3) nonprofits—that is simply not available from commercial insurers. This is because the standard practice of commercial insurance companies is to only offer property insurance combined with liability insurance as a bundled package for 501(c)(3) nonprofit clients. This prevents 501(c)(3) nonprofits, that obtain specialized liability insurance and loss prevention services from their Risk Retention Groups (RRGs), from finding satisfactory standalone property policies in the commercial market.

Thousands of nonprofits purchase specialized liability insurance, including tailored risk management services, from RRGs they own and govern. These small nonprofits are unable to purchase from the commercial market the insurance coverages they need, yet their RRG is not permitted by law to provide those coverages for them. In the absence of commercial standalone policies, many small 501(c)(3) community-based nonprofit organizations, such as programs for the disabled, homeless shelters, drug and alcohol rehabilitation facilities, day care centers for children and seniors, animal shelters and rescues, counseling centers, arts organizations and others must forgo altogether the tailored risk management of their RRGs.

G. Other Proposed Solutions Inadequate

RRGs serving nonprofit organizations have tried many solutions to this problem prior to asking for help from Congress. Nonprofit RRGs have developed group programs and used fronting companies to provide the property insurance their nonprofits need, but these solutions have proven unworkable because these standalone property policies tend to be very small in premium with minimum premiums as low as $300 per year. Even in the aggregate, with thousands of nonprofits purchasing together, the premium across 50 states is just too small to support regulatory compliance obligations making these solutions not economically viable over the long-term.

H. Third-Party Research Confirms This Market Failure

In response to requests for additional detail from Congress, several third-parties have gathered and analyzed data to confirm whether standalone property and auto physical insurance policies are available from the commercial admitted insurance market in a form needed by small and mid-sized 501(c)(3) nonprofit organizations. Summaries of those analyses are provided below.

Date of Research: Spring 2015
Party Conducting Research: Independent insurance agents and brokers representing 2,000 nonprofit clients.
Nature of Research: Email survey of 47 insurance carriers.
Findings: Only 4 carriers indicated any interest in offering standalone property, but only for larger accounts, not in all states, and with significant restrictions on habitational exposures such as domestic violence shelters, group homes, homeless shelters, and drug and alcohol rehabilitation facilities. No insurer was interested in providing standalone auto physical damage insurance.

Date of Research: May 2017
Party Conducting Research: Guy Carpenter, a Marsh & McLennan Company
Nature of Research: Determine whether the American Association of Insurance Services (AAIS) has produced for use, by its more than 700 insurance company members, a standalone property form or standalone auto physical damage form of the type needed by small and mid-sized 501(c)(3) nonprofits.
Findings: AAIS confirmed that a search of their database revealed they have not produced such a form for either property or auto physical damage. They further advised they were not aware of any independent filings of this nature made by an admitted insurance carrier.

Date of Research: May 2017
Party Conducting Research: Guy Carpenter, a Marsh & McLennan Company
Nature of Research: Determine whether the Insurance Services Office (ISO) has produced a standalone property form or standalone auto physical damage form for use by commercial insurance companies of the type needed by small and mid-sized 501(c)(3) nonprofits.
Findings: ISO confirmed that a search of their database revealed they do not presently have such a form for either property or auto physical damage. They advised they had such a property form prior to 2002;

however, it was still mandatory that the insurance carrier offered the property policy and the liability policy together. They concluded, that it was more efficient to offer the property and liability on one policy and discontinued offering the standalone property form. They have never had a standalone auto physical damage offering.

Date of Research: June 2017

Party Conducting Research: Perr&Knight is an independent, leading provider of insurance support services, including Actuarial Consulting, Competitive Intelligence, Data Services, Regulatory Compliance and Insurance Technology.

Nature of Research: Perform targeted research in the states of Florida and New York looking for admitted insurance companies having filed Business Owner's Policy (BOP) programs for organizations falling under IRS Section 501(c)(3) tax-exempt nonprofits which offer standalone property insurance as well as commercial auto coverage providing standalone auto physical damage coverage.

Findings: In New York and Florida, Perr&Knight found a filing made by North American Elite Insurance Company, part of the Swiss Re Group of Cos. offering a BOP policy for 501(c)(3) tax exempt nonprofits which offers standalone property insurance at the request of the Alliance of Nonprofits for Insurance, RRG (ANI). In addition, Perr&Knight found a New York filing by Mount Vernon Fire Insurance Company, part of Berkshire Hathaway, in which a BOP policy was designed for 501(c)(3) tax-exempt nonprofits. The Mount Vernon Fire Insurance Company filing **requires both property and general liability coverage to be purchased at the same time.** They found no filings for standalone auto physical damage coverage.

I. Consumer Protections Included in Nonprofit Property Protection Act

The Nonprofit Property Protection Act would permit only well-established RRGs to provide property insurance. It would apply only to a very narrow subsector of RRGs. Specifically, only RRG members that are small and mid-sized 501(c)(3) nonprofit organizations—organizations that qualify for donations that may be deducted from personal income taxes—qualify under this bill. Additionally, the bill requires RRGs to meet the three following minimum criteria to provide property insurance to their members:

1. Have provided liability insurance for at least ten years;
2. Have at least $10 million in capital, although the domicile regulator may require more; and
3. Insure any one member for a maximum Total Insured Value (TIV) of $50 million.

In deference to the state-based regulatory structure, the Nonprofit Property Protection Act further provides that no RRG may begin to offer property insurance in a state where there is already three licensed, admitted insurance companies offering the standalone property and auto physical damage insurance small and mid-sized 501(c)(3) nonprofits need. This means that an RRG may only offer this coverage in a state where there is a market failure.

In conversations with opponents, we have pointed out that any state insurance commissioner wishing to prohibit an RRG from offering property insurance in a state, simply needs to place on its website a list of three licensed, admitted insurance offering the coverage small and mid-sized nonprofits need. The National Association of Insurance Commissioners (NAIC) told us that it would be too onerous for insurance commissioners to send an email to the insurance companies licensed in their states and request this information of them. Isn't determining market availability precisely what insurance commissioners ought to be doing? This also begs the question. If they have not already assured themselves that the coverage exists, why do they continue to assert that it does?

RRGs are owned and governed by their members and since RRGs may only offer this benefit to 501(c)(3) nonprofit member-insureds, the only beneficiaries of this bill are the 501(c)(3) nonprofits themselves.

J. Benefits of the Nonprofit Property Protection Act

This narrow bill solves a problem limited to small and mid-sized 501(c)(3) nonprofit organizations. The Act would allow Risk Retention Groups (RRGs) to insure the property of their 501(c)(3) nonprofit members and complement the liability insurance they already provide. This is necessary because the standalone property insurance policies and standalone auto physical damage insurance policies that small and mid-sized nonprofits need is not available from commercial insurers. The only RRGs that may qualify under the Nonprofit Property Protection Act are those serving 501(c)(3) nonprofit organizations. This act would allow nonprofit members of RRGs to purchase necessary coverages and make it easier and more efficient for these small nonprofits to satisfy their property and casualty insurance needs without in any way interfering with the overall functioning of the commercial insurance marketplace, and at no cost to government.

K. Conclusion

This is prudent and well-suited regulation for a specific segment of the market. The types of nonprofits for which this bill will provide relief are those providing direct services to some of the most vulnerable members of our communities. Organizations that oversee tens of thousands of foster family agencies, provide enrichment and afterschool programs for young people, create affordable housing, rescue and find homes for abandoned cats and dogs, provide daycare and enrichment for children and fragile seniors, offer enrichment through art in underserved communities, serve meals to veterans, provide foodbanks, shelter survivors of domestic violence, provide programs for those with disabilities and more will directly benefit from the Nonprofit Property Protection Act.

This legislation has strong consumer protections. RRGs allowed to insure property under the Nonprofit Property Protection Act must be well-capitalized with a minimum of 10 years operating experience. In addition, no RRG may insure any individual nonprofit for more than $50 million in real property—a cap which limits the scope of this bill to a very small part of the commercial property market. The bill further stipulates that an RRG may only begin offering property and auto physical damage insurance in states where the coverage is not available from at least three licensed and admitted insurance companies. This bill specifically prohibits qualifying RRGs from providing health, life, disability or workers' compensation insurance.

The Nonprofit Property Protection Act is narrowly drafted to solve a problem for an often overlooked, but vital segment of our economy--small and mid-sized 501(c)(3) nonprofits--without in any way impacting the larger insurance industry, and the markets already being adequately served. This bill would give immediate relief to many thousands of nonprofits across the country. Eighty percent of these nonprofits have annual budgets of $1 million or less. Nonprofits are not asking for a handout. They are simply asking for the ability to solve a problem themselves.

Testimony of Pamela E. Davis

APPENDIX A

Adopted: 12/7/19

Risk Retention Groups: Frequently Asked Questions

1. What publications are available to help understand RRGs and state's authority?

a. NAIC Risk Retention and Purchasing Group Handbook is available from the NAIC publications webpage at https://www.naic.org/documents/prod_serv_legal_ris_bb.pdf.
   The following key documents can be found as Appendices in the Handbook:
   - Appendix A: Federal Liability Risk Retention Act (LRRA)
   - Appendix B: NAIC Model Risk Retention Act (#705)
   - Appendix D: NAIC Uniform Risk Retention Group Registration Form

b. Accreditation Program Manual
   - Part A: Laws and Regulations – 18 accreditation standards that outline the laws required specifically for states that charter RRGs
   - Part B: Regulatory Practices and Procedures - RRG specific procedures for financial analysis and procedures when a disclaimer of affiliation is filed
   - Interlineations – Reinsurance guidelines for RRG's licensed as captive insurers

2. How does the LRRA address regulation of RRGs?

a. Under §3902 of the LRRA, with the exception of the domiciliary state, RRGs are exempt from all state laws, rules, regulations, or orders that would make unlawful, or would regulate, directly or indirectly, the formation and operation of an RRG, except as provided in the LRRA. Only the domiciliary state may regulate the formation and operation of an RRG.

b. The implementation of the LRRA was intended to allow organizations to come together in the creation of a risk-bearing, risk-sharing entity (the RRG) to offer its members, who are the beneficiaries of the insurance provided, liability coverage in an expedient and economical manner.

3. How does RRG registration in a non-domiciliary state differ from the licensing process for a traditional insurer?

a. There are no solvency requirements imposed by the non-domiciliary state upon an RRG seeking to register in the State. Regulation as to formation and operation, including the imposition of solvency requirements, are imposed by the domestic state.

b. RRGs are subject to a substantially similar application and licensing process imposed by the domestic state, or state of domicile. For registration to conduct business in non-domestic states, RRGs are not subject to the standard application and licensing process (NAIC UCAA Instructions or NAIC Company Licensing Handbook).

c. The registration process is intended to be simpler than the licensing process for other types of insurers. Registration is focused on information gathering rather than decision making. Registration is not the same as admission or company licensing; it is not intended to provide non- domiciliary states with any regulatory powers over RRGs other than that provided in the LRRA. It is not within a state's authority to use the processing of a registration to bar RRGs seeking to lawfully operate in a state, nor can a state declare a "moratorium" on the filing of

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RRG registrations. Once an RRG (that is in compliance with the definition of an RRG as stated in the LRRA) provides the NAIC Uniform Risk Retention Group Registration Form with all required information entered and attached (i.e. a "complete form"), they may begin operating in the state. Approval from the non-domestic state is not required. However, best practice is for the non-domiciliary state to notify the RRG following their initial review of the NAIC Uniform Risk Retention Group Registration Form that either the form received was complete, or that the form was missing information. The non-domiciliary state may also reach out to the domiciliary state for more information and is encouraged to do so. (see the Best Practices—Risk Retention Groups document)

d. The LRRA references two documents that must be provided to the non-domestic state – a plan of operation OR a feasibility study. There is also additional information such as contact information of the RRG, chartering state information, and the lines of liability insurance business that are written by the RRG seeking to register. All this information is provided in the completed NAIC Uniform Risk Retention Group Registration Form.
e. For an RRG that is compliant with the LRRA and the regulation of their domestic state (including authorization to register to do business in another state), the non-domestic state cannot deny the RRG's registration. If there is uncertainty, the domestic state should be contacted.

4. What are the steps for the non-domiciliary insurance regulator to take in the registration process for an RRG?

a. Review the NAIC Uniform Risk Retention Group Registration Form and verify the RRG has provided a complete form.
b. Once a complete form is received, the RRG is authorized to write in the state where it registers. The following best practices may also be considered during the registration process; however, they do not impact the registration status of the RRG:
    a. Review the information provided with the registration form for reasonableness.
    b. Reach out to the domestic state insurance regulator for additional information or concerns. The best practices Inquiry Template can be used and modified as appropriate.
    c. Notify the RRG once the registration form is deemed complete. They are now registered in the state.

5. What should a non-domiciliary state do if they have concerns about a complete RRG registration form received?

a. If the RRG provided a complete form, but there are concerns about the lines of business or financial solvency, or some other matter, the non-domiciliary state should first communicate with the domestic state. If necessary, the non-domiciliary state should consider pursuing the remedies in LRRA §3902(a)(1) also discussed in FAQ #12.

6. When can a non-domiciliary state reject an RRG registration?

a. A non-domestic state cannot reject the registration of an RRG that submits a complete registration form. Instead the non-domestic state should communicate concerns to the domestic state or refer to the remedies in LRRA §3902(a)(1) also discussed in FAQ #12.

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7. Can an RRG registration be delayed if a financial statement filing and/or audit is not yet available at the time of application or registration?

a. No, an RRG can register prior to filing of an annual financial statement audit and a statement of opinion on loss and loss adjustment expense reserves with its domiciliary state.
b. Once these initial filings are made, they are available on I-Site for review.
c. If questions arise due to lack of this information, the non-domiciliary state should reach out to the domestic state to address its concerns.

8. What items does the LRRA require an RRG provide to the non-domiciliary state in conjunction with the registration?

a. It is recommended that states adopt the NAIC Uniform Risk Retention Group Registration Form, which has been developed by the NAIC in order to facilitate uniformity. Such forms are included in the Risk Retention and Purchasing Group Handbook.
b. Consistent with LRRA, each RRG shall submit a copy of the plan of operation OR a feasibility study before it may offer insurance in the state.
Note: If the RRG is newly formed, the feasibility study provides relevant information on rates and expected losses. If the RRG is expanding the states in which it operates and has been writing business for an extended period, the feasibility study becomes less relevant and a current business plan, along with documents a non-domiciliary state can easily obtain from the NAIC's I-Site (Annual Statement(s), RBC Report(s), MD&A(s), Audited Financial Statement(s), Actuarial Certification(s)) provide pertinent information.
c. If the plan of operation or feasibility study does not appear to be updated, a non-domiciliary state should contact the domiciliary state regulator to obtain more information, including the IPS, and may request revised documents from the RRG if original submission is found to be inaccurate or unclear.

9. What should be included in a plan of operation?

a. The LRRA states that an RRG's plan of operation or feasibility study includes information on liability insurance coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer.
b. In addition, the Best Practices – Risk Retention Groups document offers a list of other suggested items for inclusion in a plan of operations or feasibility study.

10. Where can the non-domiciliary state get information about an RRG's directors and officers?

a. Directors and officers are listed in the annual and quarterly financial statements available from the NAIC's I-Site. All changes in Directors and Officers, with accompanying biographical affidavit(s), are submitted to and reviewed by the domiciliary state. In order to eliminate the need for redundant regulatory functions and unnecessary transfer of sensitive personal identifiable information, a non-domiciliary state should rely on the domiciliary state's review,

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which includes background checks on directors, officers and key management personnel of an RRG to ensure the competency, character and integrity of the insurer's management.

11. What does the LRRA say about renewals for RRGs in non-domiciliary states?

a. The LRRA is silent; therefore, initial registration is sufficient unless the operation of an RRG is affected by runoff, rehabilitation or liquidation processes. RRGs file changes in business plans, financial filings, etc. on an ongoing basis with non-domiciliary states; therefore, non-domiciliary states should consider developing a process for communicating with the domiciliary state (such as the example in the Best Practices—Risk Retention Groups document) and consider an annual request for Certificate of Good Standing/Compliance from the domiciliary state.

b. Section 3902(d)(3) of the LRRA requires that an RRG submit to the insurance commissioner of each state in which it is doing business a copy of the annual financial statement that it files with the RRG's domiciliary state. Non-domiciliary states should be aware that in many states where RRGs are licensed/chartered as captive insurers in conformity with NAIC accreditation standards, RRGs are permitted to use Generally Accepted Accounting Principles rather than Statutory Accounting Principles to report on their financial conditions, with required disclosure and reconciliation in footnote one. (see also Section II, page 3 of the Risk Retention and Purchasing Group Handbook)

c. The filing is an ongoing requirement that must be complied with on an annual basis and is generally due to non-domiciliary states upon filing with the domiciliary state. The annual filing requirements for RRGs include an unaudited filing using the official Annual Statement Blank (property/casualty), an audited financial statement certified by an independent public accountant and a statement of opinion on loss and loss adjustment expense reserves made by an actuary or loss reserve specialist who is qualified in accordance with the criteria established by the NAIC in the annual statement instructions. See the above-mentioned NAIC Accreditation Program Manual, Part A: Laws and Regulations for annual filing requirements for RRGs.

12. What does the LRRA say about taxes and fees charged by a non-domiciliary RRG?

a. LRRA S3902(a)(1)(B) says any state may require an RRG to:
    a. Pay on a nondiscriminatory basis, applicable premium and other taxes, which are levied on admitted insurers and surplus lines insurers, brokers, or policyholders under the laws of the state.

b. Fees are not directly addressed in the LRRA and as such, there has been disagreement about the legality of both initial and renewal registration fees and compliance with LRRA. The authority on this topic is therefore federal case law. For example, there is one case (*Nat'l Risk Retention Assoc. v. Brown*, 927 F. Supp. 195 (M.D. La. 1996)) in which the court ruled that certain state requirements, including the payment of an annual renewal registration fee, were preempted by the LRRA. See the Risk Retention and Purchasing Group Handbook for additional detail on relevant cases and other fee considerations.

13. What remedies are available to a non-domiciliary state if violations of applicable State laws occur?

a. Secure clarification from the RRG's state of domicile;
b. Call for an examination of the RRG by the state of domicile [15 U.S.C. §3902(a)(1)(E)];
c. Pursue legal action through a court of competent jurisdiction [15 U.S.C. §3902(a)(1)(H)].

14. Is there a list of domestic and non-domestic state contact persons in state insurance regulator offices who are knowledgeable about RRGs?

a. Yes. Appendix C of the NAIC Risk Retention and Purchasing Group Handbook includes a list of state insurance department contact persons. The most recent list is maintained as a separate document on the NAIC's publication webpage alongside a complete copy of the Risk Retention and Purchasing Group Handbook. (Link to Handbook: https://www.naic.org/documents/prod_serv_legal_ris_bb.pdf)

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Best Practices – Risk Retention Groups

The domiciliary state maintains authority and has responsibility to regulate the formation and operation of a Risk Retention Group (RRG). Therefore, when concerns arise in a non-domiciliary state about a RRG, the best resource is the domiciliary state. This includes concerns about solvency and capital levels, financial condition, or other non-compliance of an RRG as well as operational questions and concerns that should be directed to the domiciliary state.

States are encouraged to examine their RRG laws to make certain that they are consistent with (1) the federal Liability Risk Retention Act (LRRA) and (2) the NAIC *Model Risk Retention Act* (#705).

Questions/Concerns from Non-domiciliary State

Upon initial registration of an RRG in a non-domiciliary state, it is not uncommon for questions to arise that are best directed to the domiciliary state. Attachment A outlines a sample Inquiry Template that can be used to request this information. The template may be customized as deemed appropriate by the non-domiciliary state. Domiciliary states should respond in a timely manner to such requests.

Questions about operations and financial solvency that arise following initial registration should also be addressed to the domiciliary state.

If significant concerns still exist after communication with the domiciliary state and the non-domiciliary state concludes that the RRG is not compliant with any of the specific procedures set forth in the LRRA, the following steps may be undertaken:

a. Refer to your own state RRG statute to ensure compliance of your prospective action;
b. Provide written notice of any non-compliance directly to the RRG;
c. Submit a demand for examination of the RRG to the domiciliary regulator, as provided by the LRRA [15 U.S.C. S3902(a)(1)(E)];
d. Institute suit in a court of competent jurisdiction.

A non-domiciliary state may request the following from the domiciliary state and similarly, the domiciliary state should be prepared to provide the following to the non-domiciliary state:

e. Insurer Profile Summary (IPS)
f. Inquire about the extent of biographical affidavit review and results of background checks
g. Most recent examination report (may be obtained from I-Site)
h. Amendments to the RRG's business plan or feasibility study
i. Verification of domiciliary state approval to expand into non-domiciliary state

Alternatively, Attachment A – Inquiry Template may be used for this request with modifications as necessary.

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Registration Timeline

The registration process for RRGs should be shorter than the licensing process for other types of insurers as the RRG is responsible only for a complete registration form* and the related attachments. The non-domiciliary state cannot reject a complete registration* that complies with those laws of the non-domiciliary state that are not preempted under the LRRA. In the event a non-domiciliary state has concerns with an RRG registration, such concerns should be raised with the domiciliary state, who has the authority to regulate the formation and operation of an RRG. The following guidelines take into consideration similar guidelines for ordinary insurance companies, and adherence is at the discretion of each state.

- A non-domiciliary state should review the registration form to ensure all required information is entered on the form within 10 business days of its receipt of the form and notify the Risk Retention Group of the need to submit any missing elements.
- Following receipt of a complete registration*, a non-domiciliary state should notify the RRG within 30 days that its registration is confirmed.
- The domiciliary state should respond to inquiries from a non-domiciliary state in a prompt manner, typically no later than 10 business days after receiving the inquiry.

*Refer to the document titled "Risk Retention Groups: Frequently Asked Questions", 3(c) for the definition of a complete registration form.

Domiciliary State Responsibilities

When a domiciliary state identifies an RRG as troubled or potentially troubled, the State insurance regulator should make efforts to communicate proactively with other state insurance regulators in which the RRG is registered (consistent with the *Troubled Insurance Company Handbook*). Although the domiciliary regulator is responsible for taking actions involving their domiciliary RRGs, awareness by a non-domiciliary state may help them to proactively do what they can to protect their residents and respond to policyholder complaints or concerns directed to them.

General Licensing Guidance

Domiciliary states should ensure the RRG's application for licensing, which includes the plan of operation and feasibility study, includes the following, at a minimum:

- information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations;
- information sufficient to verify that the liability insurance coverage to be provided by the Risk Retention Group will only cover the members of the Risk Retention Group;
- for each state in which it intends to operate, information regarding the liability insurance coverages, deductibles, coverage limits, rates and/or rating/underwriting methodology for each line of commercial liability insurance the group intends to offer;
- historical and expected loss experience of proposed members and national experience of similar exposures to the extent that this experience is reasonably available;

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- appropriate opinions/feasibility work by a qualified independent casualty actuary, including a determination of minimum premium participation levels required to commence operation and to prevent a hazardous financial condition;
- pro forma financial statements and projections, including assumptions, on an expected and adverse basis;
- identification of Board of Directors, including independence determination;
- biographical affidavits for all BOD members;
- evidence of compliance with corporate governance standards, including draft policies;
- underwriting and claim procedures;
- marketing methods and materials if available;
- draft insurance policies;
- names of reinsurers and reinsurance agreements, if available;
- investment policies;
- identification of each state in which the RRG intends to write business/register;
- identification of service providers, including fee structure and relationships to members; and
- subsequent material revisions to the plan of operation or feasibility study.

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Adopted: 12/7/19

Attachment A – Inquiry Template

The above-subject company has applied for Registration as a Risk Retention Group ("RRG") in the State of ________ to write ____________ liability coverage to its members who are in the business of________________________________. As you can appreciate, due to the provisions of the Liability Risk Retention Act of 1986 the (state) has limited authority to regulate RRGs and therefore to a large extent, the (state) relies on the RRGs' domiciliary state to exercise general oversight and responsibility in the areas of licensing, solvency, rates and marketing. As part of our due diligence, we would appreciate any information your office can share with us regarding the company with respect to the following items, some of which may be satisfied by providing the Insurer Profile Summary:

1. Any significant concerns the State of [domicile] has regarding the company.
2. Any issues that may have a significant impact on the company going forward.
3. Any issues regarding the number of consumer complaints the company has in [state of domicile] or other states that may have been brought to your attention.
4. Comments and/or concerns about the financial condition of the company.
5. Comments and/or concerns about the management or performance of the company.
6. Results of any financial analysis and/or market conduct findings.
7. The company's priority level within the Financial Analysis Division.
8. Any conditions imposed by your Department upon the company's license.
9. Any significant non-compliance issues with the State of [domicile] regulatory authority including filing requirements and corrective action, if any.
10. Comments regarding the company's application for registration in the State of [state registering].
11. Approval from State of [domicile] for the RRG to register in the State of [state registering].

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Consumer Federation of America

Testimony of J. Robert Hunter
Director of Insurance, Consumer Federation of America
January 29, 2020
Before the Subcommittee on Housing, Community Development and Insurance
House Financial Services Committee
"Examining the Availability of Insurance for Nonprofits."

Chairman Clay, Ranking Member Stivers and Members of the Subcommittee, thank you for the opportunity to present testimony before you today. I am Bob Hunter, Director of Insurance for Consumer Federation of America (CFA). CFA is an association of more than 250 national, state, and local non-profit consumer organizations that was founded in 1968 to advance the consumer interest through advocacy, research and education. Prior to my work with CFA, I was the Texas Insurance Commissioner, and I was the Federal Insurance Administrator during both the Ford and Carter administrations. In my federal role I was a member of the Interagency Task Force that proposed the first Risk Retention Group in 1977, which directly led to the Product Liability Risk Retention Act of 1981. I also founded and served as President of the National Insurance Consumer Organization, or NICO, between 1980 and 1993.

In 2002, Consumer Federation of America called on Congress to expand the Liability Risk Retention Act to cover all commercial property/casualty insurance to address the high cost of commercial insurance and availability concerns during the hard market of the early 2000s and, especially in the wake of 9-11.

Today, I am here to support a much narrower expansion than we supported in 2002. H.R. 4523, the "Nonprofit Property Protection Act" would require those states with insurance markets that cannot address the insurance needs of nonprofit organizations to authorize only very experienced and stable RRGs to provide additional coverage beyond the liability-only coverage authorized under the current Risk Retention Act.

Before I discuss why the limited Risk Retention Group (RRG) expansion in H.R. 4523 is a safe, consumer-protective approach to addressing a serious market problem, I would like to share my thoughts on the role of RRGs generally and the reason I have been supportive of this alternative risk sharing mechanism for more than 40 years.

In the mid-1970s, America faced the first of three liability insurance crises in which liability insurance had extreme price increases and shortages of coverage availability. The other crises were in the mid-1980s and the early 2000s. President Ford created an Interagency Task Force

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in 1975 to look into the cause of and solutions to the situation. The Task Force continued this research and made its recommendations under President Carter. I served on this Task Force under both Presidents as the Department of Housing and Urban Development's (HUD's) representative (the Federal Insurance Administration, which I headed at the time, was then situated at HUD).

Through closed claim studies, the Task Force determined that the 1970s crisis was caused by the economic cycle of the insurers, not by an influx of claims as the insurers had alleged.

We also proposed two solutions to the then current problem as a preemptive response to future crises when the insurer economic cycle moved into periodic hard markets:

1. Since data were not broken out for the most troubled lines, we worked with the National Association of Insurance Commissioners to require more precise data in insurer annual statements going forward, particularly for medical malpractice and products liability insurance. This was very helpful in understanding the later hard markets.
2. We suggested the product liability line was not competitive and needed greater coverage availability. We proposed the creation of alternatives to the normal insurance market and specifically proposed the creation of Product Liability Risk Retention Groups. A bill to achieve that, the Product Liability Risk Retention Act, was introduced in 1979. This bill was ultimately enacted into law in 1981.

The 1981 act limited RRGs and risk purchasing groups to insurance covering only product liability and completed operations liability. RRGs had to be chartered, and thus regulated, as an insurer in one of the United States or U.S. jurisdictions (in the original Act, charters were also allowed in Bermuda or the Cayman Islands). The act specifically exempted RRGs from most regulation by any state in which they operated, except from the chartering state. This federal exemption, however, did not pre-empt laws that were not specific to the business of insurance, such as fraud or deceptive practice laws.

In the mid-1980s there was a second liability insurance crisis, again caused by the insurer economic cycle. This hard market period caused even more serious shortages of coverage and price jumps in the traditional insurance market. As President of the National Insurance Consumer Organization (NICO) at the time, I was very involved in explaining the insurance market economics causing the crisis and testified about that phenomenon in Congress several times and, over the course of 1986, in all 50 states of the Union.

This mid-1980s crisis led Congress, in 1986, to expand the 1981 Act to include most types of commercial liability insurance and expanded the organizations that could form such groups to include any business (as well as state or local governments or governmental entities) as long as all the members of a single group were engaged in similar business activities or were exposed to similar risks. This expansion did not extend to the small number of foreign-based risk retention groups. These foreign groups, formed under the 1981 Act's authority described above, were allowed to continue in the area of product liability insurance but were not

permitted to expand into other kinds of commercial liability insurance. The 1986 Act also allowed some increased oversight of risk retention and purchasing groups, including the requirement to file documentation in non-chartering states, and the right of non-chartering commissioners to conduct examinations if the chartering state failed to do so and to seek injunctions against groups in a hazardous financial situation. In general, however, the intent of Congress was still to allow these groups to operate throughout the country while being regulated largely by a single state regulator.

That single-state-regulator approach notwithstanding, it is worth noting that the construction of the federal law is such that while RRGs have certain exemptions from state laws, this is not a blanket exemption.

Even, for example, if an RRG is domiciled in Vermont,

- when serving nonprofits in Ohio, it will be subject to Ohio's law concerning Good Faith and Fair Dealing;
- when serving nonprofits in New York, it will be subject to that state's Civil Code §349 on deceptive acts and practices;
- in Arkansas, Florida, and California, the Vermont-domiciled RRG is subject to the Arkansas Civil Rights Act of 1993, the Florida Civil Rights Act, and California's Unruh Civil Rights Act;
- in Texas, Illinois, and New Jersey, the RRG is subject to the respective fraud laws in each state; and
- to generalize the point, each state applies its own consumer protection laws to RRGs including those state laws involved in unfair claims practices and fraudulent practices irrespective of where the RRG is domiciled.

So, while we needed to construct a unique regulatory system to support this unique risk management mechanism, the law ensures that many significant state consumer protections still apply.

RRGs that cover the liability insurance needs of nonprofit groups have served the nonprofit sector well over the past 30 years and with an attention to sector-specific (and often unusual) needs that the private insurance market has not been able to provide. Historically, nonprofits that also have property insurance needs have gone to the private commercial market for that coverage, which they maintain in conjunction with their RRG's liability coverage. However, there is evidence that there is not a competitive market among private commercial insurance carriers offering stand-alone property coverages to small- and medium-sized nonprofits that get their liability coverage through an RRG. That is, insurance providers will only sell property insurance bundled with liability coverage, yet, as I noted previously, the private liability insurance market does not adequately cover the unique needs of nonprofit organizations and is often not a workable option for these important non-profit entities.

Indeed, CFA's own member organizations have expressed both a difficulty being able to afford the commercial insurance coverage they need and difficulty finding insurance that provides coverage appropriately tailored to the unique activities of their organizations. As one of our state member consumer advocacy organizations explained, every time they have sought quotes from a private insurer for liability coverage, they have been told they could only get a policy that excluded any activity involving legislative advocacy, which is, obviously, problematic for a consumer advocacy organization. For reasons like this, thousands of small and medium-sized nonprofits around the country rely on the Risk Retention Act for their insurance. But if they cannot use that right to an RRG, because they cannot get property insurance, then the Act will no longer function as intended.

A 2017 study by the firm Guy Carpenter, a subsidiary of the industry giant Marsh and McClennan, captures this problem in stunning detail. According to Guy Carpenter's research, as follows:

> Despite extensive research over several months, other than those filings made by Swiss Re on behalf of the Alliance Member Services Program, we were not successful locating standalone auto physical damage or standalone property coverage filings that could be used to provide appropriate monoline coverage for 501(c)(3) nonprofits wishing to purchase a property or auto physical damage policy without simultaneously purchasing liability coverage. The few filings applicable to small and mid-sized nonprofit organizations, required the simultaneous purchase of property and liability insurance.

Based on my experience and expertise, I believe that expansion of the Act proposed under H.R. 4523 is needed to enable non-profit entities to access difficult to obtain property insurance to complement their extant RRG liability coverages. This narrow expansion is consistent with the original intent of Congress to ease difficult markets where normal insurance competition is weak and threatened. As we have heard from non-profit entities, the only provider of stand-alone property coverage to wrap around the RRG liability coverage is threatening to leave the market. One market participant is insufficient to be workably competitive even should that carrier decide to stay in this business. The current spate of catastrophes has weakened the property insurance market in many parts of the country as well.

If you, like me, believe that nonprofit organizations have unique enough liability exposure that needs the specialized offerings authorized under the 1986 Liability Risk Retention Act, then this Guy Carpenter report makes it plain that we have to allow RRGs to complement their liability policies with property coverage, or nonprofits with property and auto exposure will not be able to get the protection they need.

This situation, if left unaddressed, will force nonprofits to choose between having appropriate liability coverage but no access to property coverage or having property coverage but no access to sufficient and appropriately tailored liability coverage.

There is no reason to force this dilemma onto nonprofit organizations – these are groups that assist homeless veterans, provide programs for children with autism, advocate for consumer protections, and provide many other services to poor and marginalized populations. This high risk group of service providers are also unique in the fact that significant numbers of the providers of these services are volunteers. By expanding the authority of RRGs to provide the property coverage that nonprofits also often need, we can avoid an insurance availability crisis for the organizations that serve our country on a nonprofit basis.

Because the structure of state oversight of RRGs is different than traditional insurance companies, we believe that there is an important federal role in establishing standards that will ensure the nonprofit members of RRGs are safe from unnecessary risk related to the RRGs solvency.

H.R. 4523 provides three strong standards to ensure that risk retention property coverage could only be offered under certain conditions. Those are:

1. It can only be offered in a state in which the State Department of Insurance cannot identify at least three companies that actually sell standalone property and auto physical damage policies to nonprofits;
2. The RRGs authorized to sell the expanded coverage have to meet key tests in terms of capital, surplus, and levels of exposure to risk; and
3. No RRG can sell the additional coverage to nonprofits unless and until it has been engaged in the business for at least 10 consecutive years.

The first standard, in which state departments of insurance can bar this expansion simply by demonstrating that there is not a problem in the state should put to rest the argument that this bill is not needed because there is no problem. The legislation contemplates the possibility that, in some states, there is no problem, and it allows a commissioner to step in and block any expansion if that is the case.

The third standard I noted, which requires an RRG to have been operating for 10 years prior to selling the expanded coverage should put to rest another argument I have heard, in which some claim that expansion may leave nonprofits subject to unstable or unsafe carriers. I am providing with my testimony a 2019 Report prepared by the trade journal *Risk Retention Reporter* with data that show that no Risk Retention Group that serves nonprofits *and* has operated for at least 10 years has ever become insolvent. Now, to be clear, property coverage is different than liability coverage, so I am not comparing the zero insolvencies for the RRGs impacted by this law to the many insolvencies we see in the traditional insurance market, but, based on the data, there is no way to suggest that allowing stable RRGs that only serve nonprofits to add property and auto physical damage coverages will put nonprofits at greater risk than if Congress does nothing.

I would note that CFA would be supportive of including all RRGs, or even just nonprofit-serving RRGs, in state guaranty funds as a further protection for the nonprofit policyholders who rely on risk retention groups to ensure their ability to serve their communities.

I am happy to answer any questions you have.

Analysis of Risk Retention Group Insolvencies: A Risk Retention Reporter Special Report

Since the passage of the Liability Risk Retention Act in 1987 there have been 505 risk retention group formations. Over that same time frame there have 46 RRG insolvencies, including National Warranty Insurance Risk Retention Group an insurer formed under the 1981 Product Liability Act, for an overall insolvency rate of 8.7%.

Trends in risk retention group insolvencies vary greatly by business sector and years of operation. For example, RRGs serving the Transportation sector have an insolvency rate of 22.9%, while groups serving the Professional Services sector have an insolvency rate of 3.8%.

Risk Retention Group Insolvency Rate by Business Sector

Business Sector	# of Insolvencies	Total RRG Formations	Business Sector Insolvency Rate
Environmental	1	20	5.0%
Financial	1	7	14.3%
Government & Institutions	1	22	4.5%
Healthcare	14	264	5.3%
Leisure	1	8	12.5%
Manufacturing & Commerce	6	41	14.6%
Professional Services	1	26	3.8%
Property Development	3	47	6.4%
Transportation	16	70	22.9%
Total	44	505	8.7%

The first ten years of operation see a much higher rate of insolvency, with the largest number of risk retention group insolvencies occuring between four and seven years of activity. Only nine risk retention groups have gone insolvent after ten years of operation, giving those RRGs an insolvency rate of 1.8%.

Only one risk retention group has gone insolvent after more than 15 years of activity, the aforementioned National Warranty Insurance Risk Retention Group. As a group formed grandfathered in under the LRRA, National Warranty differed from groups formed after 1987 in that it was domiciled in the Cayman Islands.

Risk Retention Group Insolvency Rate by Age

Years Active	Count of Insolvent RRGs
1 to 5	18
5 to 10	19
10 to 15	8
15+	1

Appendix: Risk Retention Group Insolvencies by Years Active

RRG Name	Coverage and Membership	Years Active
National Warranty Ins. RRG	Automobile Service Contracts	22.76
Fairway Physicians Ins. Co., A RRG	Medical Malpractice for Physicians	13.97
Oceanus Ins. Co., A RRG	Medical Malpractice for Physicians	12.96
Elite Transportation RRG	Commercial Truckers	12.96
Doctors Insurance Reciprocal (RRG)	Medical Malpractice for Physicians	12.92
Lancet Indemnity RRG, Inc.	Professional liability for physicians	11.98
First Keystone RRG, Inc.	Commercial Taxis and Commercial Vehicles	11.04
Pinelands Ins. Co. RRG, Inc.	Commercial Taxis	10.76
American National Lawyers Ins. Reciprocal (RRG)	Legal Malpractice for Attorneys	10.25
Jamestown Ins. Co., A RRG	Propane Distributors	9.90
Indemnity Insurance Corporation, RRG	Insurance for Nightclubs, Concerts, Special Events	9.58
National Dental Mutual Ins. Co., a RRG	Malpractice for Dentists	9.25
Doctors & Surgeons National RRG IC, Inc.	Medical Malpractice for Physicians	9.13
United Contractors Ins. Co., Inc., A RRG	General liability for contractors and builders	8.96
Lewis & Clark LTC RRG	General and professional liability for long-term care facilities	8.89
Ocean RRG, Inc.	Commercial auto liability for taxicab operators	8.45
HOW Insurance Co., A RRG	Home Owner Warranties for home builders and remodelers	7.75
PrimeGuard Ins. Co., Inc., A RRG	Contractual liability for automotive service contracts	7.68
Nonprofits' Mutual RRG, Inc.	Various liability lines for 501(c)(3) nonprofits	7.26
The Reciprocal Alliance (RRG)	General and professional liability for healthcare systems	7.25
Beverage Retailers Ins. Co. RRG	Liquor liability for retailers licensed to purvey spirits,	7.09
Liberty First RRG Insurance Co.	Commercial auto and cargo liability for truckers	7.05
Professional Mutual Insurance Co. RRG	Professional liability for osteopaths, M.D.'s and dentists	7.01
Spirit Commercial Auto RRG, Inc.	Commercial auto liability for truckers	6.90
Scaffold Industry Insurance Co. RRG, Inc.	General and excess liability for scaffolding distributors	6.23
Capital Assurance RRG, Inc.	Contractual liability for automotive service contracts	6.17
No. American Physicians Ins. RRG (NAPI)	Professional liability for physicians	5.92
Transurance RRG, Inc.	Commercial auto liability for truckers	5.25
Transportation Liability Ins. Co., A RRG	Commercial auto and general liability for truckers	4.84
NSA RRG, Inc.	General liability for grocery stores	4.84
Physicians' National RRG, Inc.	Medical malpractice for health care providers	4.59
Astraea RRG, Inc.	General and auto liability for truckers	4.50
Federal Motor Carriers RRG, Inc.	Commercial auto liability for truckers	4.34
U.S. Physicians Mutual RRG	Medical Malpractice for Physicians	4.25
Financial Advisors Assurance Select RRG	Professional liability for financial professionals	4.09
Charter RRG Ins. Co.	Commercial auto liability for car rental and limousine co.	3.92
CareConcepts Insurance, Inc., A RRG	General and professional liability for long-term care facilities	3.50
United Physicians RRG	Medical Malpractice for Physicians	3.17
Petroleum Marketers Mutual Ins. Co., a RRG	Unknown coverages for petroleum companies	2.92

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RRG Name	Coverage and Membership	Years Active
Rent Rite Advantage Services, Inc. a RRG..	Unknown coverages and membership	2.42
National Auto Mutual Insurance Co., A RRG	Auto liability for commercial vehicles	2.25
Carrier Solutions RRG, Inc.	Contractual liability for trucking companies benefits	2.00
Cabina-America Insurance, A RRG, Inc.	Commercial auto liability for taxi owners	1.84
National Transportation RRG, Inc.	Auto liability for taxis and limousines	1.08
Commercial Truckers RRG Captive Insurance Co.	Commercial auto liability for truckers	0.92
Transportation American Group, Inc., An Ins. RRG	Commercial auto liability for taxi owners	0.67

Testimony of
Director Chlora Lindley-Myers
Missouri Department of Commerce and Insurance
On Behalf of the National Association of Insurance
Commissioners

Before the
Subcommittee on Housing, Community Development, and Insurance
U.S. House Committee on Financial Services

Regarding:
Examining the Availability of Insurance for Nonprofits

January 29, 2020

Chairman Clay, Vice Ranking Member Gooden, and members of the subcommittee, thank you for the invitation to testify today. My name is Chlora Lindley-Myers. I serve as the Director of the Missouri Department of Commerce and Insurance, and am also an officer of the National Association of Insurance Commissioners (NAIC).[1] I am pleased to be testifying today on the NAIC's behalf.

As state insurance regulators, our focus is on the dual objectives of protecting insurance consumers and ensuring competitive and stable markets in our states. Nonprofit organizations serve a critical role in our country and we recognize the importance of ensuring that these organizations, like all insurance consumers, have access to insurance that meets their needs. We understand some have raised concerns regarding the availability of commercial property coverage for nonprofits. They have also argued that HR 4523, the Nonprofit Property Protection Act, which allows Risk Retention Groups (RRGs) to write commercial property coverage for nonprofits and further preempts state regulatory protections for policyholders, is the appropriate mechanism for addressing such concerns. On both accounts, we respectfully disagree.

The Regulation of RRGs

By way of background, during the 1980s, the availability of liability insurance became severely restricted. As a response, in the 1981 Product Liability Risk Retention Act, subsequently amended in 1986 and known now as the Liability Risk Retention Act (LRRA), Congress authorized a narrow exception to the usual state insurance regulatory framework through the creation of RRGs. RRGs are liability insurance companies owned by their members and required to be chartered or licensed as a liability insurance company under the laws of a state. They are permitted to insure liability risks, and their members must be engaged in similar business practices and face similar liability exposures. Even though RRGs may operate in multiple states and many do, they are only required to be licensed in one, their domiciliary state. Unlike other areas of commercial insurance, the regulatory authorities of non-domiciliary states are significantly curtailed. Outside of their domiciliary state, RRGs are not subject to financial examinations unless the domiciliary state has failed or refused to examine the RRG. A non-domiciliary state's regulatory oversight is limited to requiring RRGs to comply with laws related to unfair claim settlement practices, deceptive and fraudulent acts, paying taxes, and "register[ing]" with the state to receive service of legal documents.

These limitations are significant because it means 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. This is particularly concerning as several RRGs do not even provide coverage to policyholders in their domiciliary state where they are subject to regulation. In 2018, only approximately 30% of all RRGs wrote business in their state of domicile. This means that under

[1] As part of our state-based system of insurance regulation in the United States, the National Association of Insurance Commissioners (NAIC) provides expertise, data, and analysis for insurance commissioners to effectively regulate the industry and protect consumers. The U.S. standard-setting organization is governed by the chief insurance regulators from the 50 states, the District of Columbia, and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer reviews, and coordinate regulatory oversight. NAIC staff supports these efforts and represents the collective views of state regulators domestically and internationally. For more information, visit www.naic.org.

HR 4523, an RRG already subject to weaker regulatory requirements based thousands of miles away with no presence in Missouri would be able to write property coverage for Missouri policyholders, and I would have extremely limited oversight or ability to take action to protect those policyholders should anything happen. The same limitation would apply to your state's insurance commissioner and your constituents as well.

Further, while it is true all states are required to establish a baseline level of regulatory requirements for RRGs in order to obtain NAIC accreditation, those baseline standards are specifically designed for the purpose of RRG regulation. These standards specifically relate to the liability lines of business RRGs are entitled to write, are subject to the limitations in the LRRA, and, are not the same requirements utilized for admitted market regulation. In this regard, the minimum capital requirements are different, the types of assets that can be used for capital are different, the accounting systems can be different, and, as a result, the thresholds for intervention can be opaque to regulators. Essentially, because RRGs are narrowly focused on their members' liability risk, the LRRA allowed them to operate on an unlevel playing field with relaxed treatment relative to traditional commercial insurers. Expanding the lines of coverage an RRG can write, as HR 4523 would do, expands the unlevel playing field and exposes nonprofits to greater risk with fewer regulatory protections.

Historically, RRGs have also had a higher rate of insolvencies when compared to admitted carriers. Over the past ten years, RRGs entered receivership at nearly two times the failure rate of admitted carriers. In the event of an insolvency, RRG policyholders do not have the same protections as admitted carrier policyholders. In the case of an admitted carrier insolvency, the state-run guaranty fund steps in to pay outstanding claims when the failed insurer's assets are insufficient. The LRRA, however, prohibits RRGs from participating in the state guaranty fund system. Consequently, in the event of an insolvency, RRG policyholders can only collect on claims if the company has sufficient assets to pay them.

Availability of Coverage

While the passage of the LRRA may have been viewed as appropriate in the 1980's to address a widespread availability crisis, no such crisis exists today that would merit this drastic and unnecessary preemptive deregulatory legislation that would undermine policyholder protections for some of the most vulnerable consumers of the commercial insurance markets. Traditional admitted carriers do provide coverage to small and medium-sized nonprofits, albeit some offer it in the form of a full businessowner's policy (BOP) that contains both commercial liability and property coverages.

Further, state insurance departments have received few, if any, complaints from nonprofit policyholders indicating that they are unable to obtain the coverage they require. While we are aware that monoline commercial property coverage is less common, the fact that commercial property coverage for nonprofits is offered through a full businessowner's policy that contains both commercial liability and property coverages is not indicative of a market crisis. Instead, it suggests that that the bundled product is the preferred approach in the market, and that admitted carriers are now able to offer liability coverage they were unable or unwilling to do in the 1980s when the LRRA was enacted. In fact, the issue of availability was explored by this subcommittee

in 2017 and at that hearing, industry representatives provided testimony representing that nonprofits can purchase commercial property insurance in the private market and have a wide selection of insurers from which to choose.[2] As stewards of the insurance markets in our states, we are aware of no material change in market conditions today that would suggest otherwise. Proponents of this legislation have highlighted a preference, not a market in crisis worth further preemption of the state based regulatory system and erosion of policyholder protections.

Notwithstanding any questions surrounding availability, we are troubled by the idea of less-regulated RRGs providing commercial property coverage where there are more appropriate existing alternatives. First, nonprofit policyholders could seek coverage from traditional admitted market carriers and receive the robust regulatory protections that the state insurance regulatory system can offer. Second, though we strongly encourage nonprofits to seek coverage in the admitted market, in the event they are unable to obtain coverage, they could find coverage in the surplus lines market. While surplus lines regulation is admittedly different than that of the admitted market, there are greater regulatory protections for surplus lines policyholders in non-domiciliary states than those afforded to RRG policyholders. Regardless of where a surplus lines carrier is domiciled, the regulator of the policyholder's home state has authority over the placement of surplus lines insurance. For example, the policyholder's home state can sanction the surplus lines broker, revoke their license, and hold them liable for the full amount of the policy. State insurance regulators can also use their authorities under the state Unfair Trade Practices Act and similar statutes to protect insurance consumers, including ensuring that claims are paid, the insurer or broker is not misrepresenting what is in the policy, as well as remedying other bad conduct.

As for those RRGs that wish to sell commercial property coverage, we encourage them to explore converting to an admitted carrier or affiliating with one, thereby ensuring that their policyholders have access to the most robust consumer protections. While such conversion or affiliation takes time, and comes with some cost, the policyholder members of the RRG will be the beneficiaries of greater regulatory protections and a reduction in financial risk that far outweigh the burden or expense associated with such conversion or affiliation. The NAIC is aware of six RRGs that operated for at least ten years as an RRG and then converted to an admitted carrier.

Additional Concerns Regarding the Nonprofit Property Protection Act, HR 4523

In addition to the significant overarching concerns the NAIC has with RRGs writing commercial property coverage, the NAIC also has additional concerns with the Nonprofit Property Protection Act. While we appreciate that HR 4523 attempts to instill some minimum criteria that RRGs must meet to be eligible to provide property insurance, we believe the criteria are insufficient to provide the necessary regulatory protections for the most vulnerable of the commercial insured and we strongly disagree with assertions that the bill is drafted so narrowly that it would not in any way interfere with the normal function of the property and casualty market. This bill would allow RRGs to provide commercial property insurance in any state without being subject to the regulatory requirements that the state departments of insurance determined is best for its residents. It also

[2] *See* Examining Insurance for Nonprofit Organizations, Hearing Before the House of Representatives Subcomm. On Hous. and Ins., 115 Cong. (2017) (Statement of Tom Santos, American Insurance Association at 11-12, and Statements for the Record of the Independent Insurance Agents and Brokers of America at 2-4 and National Associate of Mutual Insurance Companies at 1, 4-5.)

precludes them from conducting an examination or taking action to protect policyholders in their states except in the most limited circumstances. This is a significant divergence from the normal regulatory practices of the property and casualty market. As regulators, our goal is to incentivize policyholders to obtain coverage and insurers to write in markets that have more robust regulatory protections. This legislative proposal undermines that critical objective.

HR 4523 also attempts to establish an availability test; however, the criteria used to demonstrate availability is exceedingly narrow and not a credible measure of availability. The legislation requires the state to identify three or more admitted carriers currently providing monoline businessowner's property coverage to nonprofits, and that make obtaining the coverage "easily accessible." However, in cases such as these, the relevant market for purposes of evaluating availability of a product should, along with the monoline coverages, include BOPs that bundle liability and property coverage as well as companies that may not have in-force policies but are legitimately planning to provide the coverage within a reasonable amount of time. The proposed test also appears to allow RRGs to begin writing the coverage and continue to do so in perpetuity even if the commissioner subsequently finds the coverage is available in the market by non-RRG writers.

In conclusion, we are seriously concerned that allowing RRGs to sell commercial property coverage would create more risks for the RRGs and, ultimately, their insureds. The limited oversight of non-domiciliary states in the RRG regulatory framework, coupled with the lack of state-run guaranty fund protection and increased risk of insolvencies associated with RRGs, could expose nonprofit organizations and those who rely upon them to unnecessary risks. We encourage any nonprofit policyholders that have difficulties with obtaining property coverage to contact their state insurance regulators so that we can seek to address such issues through appropriately tailored state-based regulatory solutions as we do with all other lines of insurance. We appreciate your consideration of our views and thank you for the opportunity to testify today.

Written Testimony

January 29, 2020

Before The

Subcommittee on Housing, Community Development and Insurance

The Committee on Financial Services of the United States House of Representatives

By

Ivoree Robinson

Vice President

ABD Insurance & Financial Services, Inc.
Oakland, California

Mr. Chairman, Ranking Member Stivers, and Members of the Subcommittee:

Thank you for the opportunity to testify about the difficulties nonprofits have finding appropriate property/casualty insurance from commercial insurance companies. My testimony is directed primarily at the difficulties small and mid-sized community-based nonprofits and their insurance agents and brokers experience in this area. I will also speak about my experience working with a risk retention group to assist these organizations to obtain insurance that is both affordable and appropriate for their needs. In particular, I will describe my experience trying to obtain coverage for one of my clients, Black Lives Matter. Finally, I will express strong support for H.R. 4523, Nonprofit Property Protection Act which will permit a small subsection of established risk retention groups to provide property insurance to their nonprofit members.

ABD Insurance Services is one of the fastest growing private insurance brokerages in the United States, specializing in protecting organizations from risk that can put them out of business. Our company is committed to serving nonprofit organizations who give so much back to our communities. We have done extensive work to help nonprofits secure insurance that is appropriate for them and that they can afford on their always limited budgets. We have clients who deliver a wide range of community-based services including education, animal and environmental protection, care for individuals with disabilities, civil justice, job readiness, and youth programs, to name just a few.

I would like to provide a few examples of the type of work these nonprofits do.

One of our clients provides services to people with cerebral palsy, epilepsy, autism and Down syndrome. They help these individuals find meaningful employment, but also work with them to make sure they enjoy social inclusion and self-determination, leading to emotional and physical well-being.

Another of our nonprofit clients helps find thousands of homes for cats and dogs, including providing shelter and care for those that are injured or sick. They are able to provide this service through a network of volunteers providing foster homes.

Another client works with a worldwide network of women, youth, and Indigenous Peoples to address global problems like climate change, inequality and food scarcity. While yet another nonprofit provides early education for hundreds of low-income children, as well as providing assistance and transportation for fragile adults and children. Yet another nonprofit works with children and adults with interrelated mental health, substance abuse and critical living needs, such as housing and employment. And another works with children and teens in some of our most violent cities by providing options for sports and fitness and academic learning support and enrichment. Still others house children who have been abused, some of whom are now perpetrators themselves.

Importantly, many of these organization bring together our communities through volunteers who provide valuable free labor to these organizations doing things as diverse as clerical assistance, dog training, videography, driving, and teaching computer programming. Volunteers improve the lives of the community and volunteering enriches the lives of the individuals who freely contribute their time, labor and resources.

Insurance Options for Nonprofits are Limited

Even in the best and most competitive of insurance markets, nonprofits are always at a disadvantage when trying to purchase exceptional property and casualty insurance that is tailored to fit their specialized exposures. Out of the more than 150 insurance companies that we work with, only about 3%, yes you heard that correctly, 3% are focused on providing the specialty insurance coverage that nonprofits need to thrive in our communities. And none provide the standalone property that small and mid-sized nonprofits need to pair with the liability insurance they obtain from their own risk retention groups.

ABD is a large insurance brokerage with an extensive selection of insurance companies to offer to our commercial and personal lines clients. But when it comes to our nonprofit clients, particularly small to mid-sized nonprofits providing social services to their local communities, we have very limited access to appropriate and affordable liability and property insurance.

Nonprofit organizations spring from community need and the desire of community-oriented citizens to help alleviate that need. Typically, nonprofits are started for, and grow to fit, the needs of a specific population within a given geographic region. Most of them are started by volunteers who bring their lived experiences to help solve a community need. They represent creative solutions to specific community problems. And, as I indicated early, many of them rely on dedicated volunteers. While this variety and creativity is extremely good for our communities, it can make them challenging for insurance companies to tailor specific coverages for them and provide that coverage at prices that make sense for the small size of these operations.

Trends Further Reducing Insurance Options for Nonprofits

There are a couple of trends occurring simultaneously in the insurance industry that are making securing affordable insurance even more difficult for small community-based nonprofits. First, there is an increasing trend towards automation within the insurance industry. Insurance carriers are trying to take advantage of technology tools such as artificial intelligence to make the evaluation and underwriting of risk more efficient. This makes good sense for insurance companies hoping to shrink their operating margins. However, in the increasingly data driven insurance industry, organizations that cannot fit themselves into and "underwriting box", as small community-based nonprofits cannot, have fewer and fewer options for insurance. As I indicated early, only about 3% of the more than 150 insurance companies we work with offer tailored insurance for nonprofits. And we see that number shrinking rather than growing.

Another trend making it more difficult for small community-based nonprofits to secure insurance is the continuing consolidation of insurance agents and brokers. While ABD and some others are exceptions, many insurance brokerages will not pay commission to their individual agents and brokers working for them on accounts that don't generate a minimum amount of commission. Many, if not most community-based nonprofits fall below that minimum threshold. Furthermore, small nonprofits rely on their small local insurance agents to obtain their insurance and these agents may not have the premium

volume necessary to gain access to the larger insurance companies that are offering package options.

One additional trend making the limited coverage for nonprofits even more scarce is the recent high-profile nature of sexual abuse and sexual harassment claims. The mission of many nonprofit social service providers is to take care of the most vulnerable in our communities. Nonprofits are often providing around the clock supervision of children, those with developmental disabilities and fragile seniors. Many of the children may have been victims of abuse themselves. These are difficult and demanding responsibilities. Insurance for allegations of sexual abuse is expensive and difficult to find, and, those few carriers that still offer this coverage, typically offer it only as a "package" combining both the property and the liability together, and not offering it as separate standalone coverages.

Finally, the insurance industry is getting ready to enter one of the worst "hard markets" in decades which means sharp increases in premium for all policies holders in the 2020 year and beyond. The insurance markets have suffered record claims and losses due to wild fires, hurricanes, earthquakes, and other natural disasters that are not showing signs of slowing down anytime soon. Since there are only so many insurance markets to purchase reinsurance from, this has resulted in decreased capacity to provide coverage and increases in premium as much as 100% for policyholders. This trend will continue until markets are able to recover in order for the insurance companies to not go out of business. Unfortunately, even though the vast majority of small and mid-sized community-based nonprofits do not have the significant exposures to these risks, the are not going to be exempt from the negative impacts of a hard insurance market. In addition to premium increase, insurance carriers have further restricted the types of nonprofits they will ensure further limiting their access to the insurance needed to protect their missions.

Nonprofits do not tend to be in high rises by the coasts or in densely wooded wildfire prone areas. However, they are going to suffer the increases and coverage reductions if they are part of the general marketplace. Nonprofits tend to be located in the city centers and only a small portion of them have high value buildings. Most nonprofits have the need for coverage provided by the property portion of a Business Owners Policy, not the commercial property form needed by those with more complex property risks. RRGs for nonprofits can demonstrate to reinsurers that they do not have the same exposure to high risk property and, based on the experience of other alternative nonprofit insurance providers, may well be able to shield nonprofits from the worst of the price increases and coverage limitations, in both liability and property insurance.

Nonprofits Need Many Options for their Insurance Needs

Because of all of these trends making it more and more difficult to find affordable and tailored property and casualty insurance for my 501(c)(3) nonprofit clients, a few years ago I began actively working with a risk retention group for nonprofits. The insurance market is changing and there are many alternatives to traditional carriers that have formed to meet the needs of our clients, both for-profit and nonprofit across the country. As part of my due diligence as an insurance broker, I need to make sure that the options I recommend to my clients offer the appropriate insurance policies, have good reputations for fairly paying claims, and are financially strong. I learned about the great reputation of this particular risk retention group and thoroughly reviewed their policy offerings to make sure they were comprehensive.

Furthermore, I know that risk retention groups are strongly regulated in a manner similar to traditional insurance companies. In fact, in reviewing the National Association of Insurance Commissioners (NAIC) website, I noted they describe the many standards that apply to risk retention groups including the same Risk-Based Capital Standards and Risk-Focused Examinations and the uniform standards for regulations risk retention groups based on the Model Risk Retention Act.

The risk that faces us relating to this risk retention group for nonprofits is not related to their financial strength, but related to the property that they are prevented by federal law from offering. Thankfully, this is a risk that Congress can resolve with H.R. 4523. And, I wish to acknowledge and thank Subcommittee Chairmen Green, Clay and Meeks for their leadership on this issue.

Standalone Property Not Available in a Form Nonprofits Need

We are able to obtain liability insurance from the risk retention group for our nonprofit clients, but we aren't able to find good commercial standalone property options to pair with the liability insurance offered by the risk retention group. The **only exception** is a single fronting program, provided through a traditional insurance carrier, for members of the risk retention group. But this program is in a precarious situation as I describe below.

Traditional insurance companies typically require the purchase of liability and property insurance purchased together as a bundled package for small and mid-sized nonprofits. That practice of offering "package" or "bundled" coverage to small and mid-sized nonprofits makes economic sense for insurance companies looking for efficiencies. But it does not work for our nonprofit clients that are members of their own risk retention groups.

As I indicated above, for small and mid-sized nonprofit risk retention group members we are essentially relying on a single "fronted program" for the property policies. The carrier that is providing the capacity for standalone property insurance for small nonprofits is looking to leave this market because it is simply inefficient for them to provide these small policies on a standalone basis. This is an unreliable position for both these nonprofits and their insurance brokers which are relying on this single source of property insurance whose continued existence is in doubt. Thankfully, this imminent crisis can be resolved by H.R. 4523, Nonprofit Property Protection Act.

H.R. 4523, Nonprofits Property Protection Act, is a Prudent Solution

The bill presently under consideration, H.R. 4523, Nonprofit Property Protection Act, puts additional requirements on risk retention groups that may offer property insurance. It requires those risk retention groups to have a minimum of 10 years offering liability insurance and a minimum of $10 million in capital and surplus. A risk retention group regulator can certainly require higher limits of capital and would do so if required by Risk-Based Capital Standards.

I would like to close with just one example of why it is extremely important that risk retention groups for nonprofits continue to exist. I am the insurance broker for Black Lives Matter. My experience of trying to find property and casualty insurance for them has solidified my support of risk retention groups and their important role in supporting new and emerging community-based, civil justice organizations. I spent nearly a year and endured rejections from 90 traditional insurance companies in my efforts to find basic liability insurance for Black Lives Matter. Insurance underwriters reacted to sensational headlines, rather than examining the actual operations of this organization. Ultimately, it was nonprofits' own risk retention group that provided the necessary coverage. Without insurance, organizations like this cannot obtain financial support through fiscal sponsorships, rent facilities, receive permits to hold rallies, raise funds from government sources or engage the services of individuals willing to provide services as volunteer board members. I am proud of the industry I have chosen for my career, but this experience made be see very clearly how not having access to insurance can impede the important work of community-based organizations.

We have found the risk retention group solution to be an excellent one for many small and mid-sized community-based nonprofits. We cannot stress strongly enough how important it is that H.R. 4523 become law so that well-capitalized and seasoned risk retention groups are able to provide property insurance to their members.