

Federal Regulation of Insurance/Optional Federal Charter

ACTION NEEDED:

Congress should preserve the ability of states to regulate the business of insurance. Federal regulation of insurance, or a dual regulatory system known as an optional federal charter, would ultimately be detrimental to American consumers and the economy.

BACKGROUND:

Insurance in the United States has traditionally been regulated by the states. The present and long-standing system of state regulation of insurance has produced an industry that is intensely competitive and a world leader in product innovation and consumer protection. Even in the face of the recent distress in global financial markets, U.S. insurers have remained sound as an industry.

There is, however, a growing interest among some policymakers, insurance and other commercial groups to pass legislation that would create a new national insurance regulator—setting up a system known as an Optional Federal Charter (OFC), or a dual regulatory system, in which the regulated entity gets to choose its regulator (either on the state or the federal level).

The creation of an optional or mandatory federal regulator is a misguided policy that would be the equivalent of deregulation at a time when our markets need to examine systemic risk and reform regulatory policies to ensure the protection of consumers and investors. The undermining of the rigorous oversight of insurance under today's state-based structure would weaken those protections and expose consumers to unnecessary risk.

Federal regulation would likely drive up costs for consumers because of the inherent costs with establishing an additional and redundant federal regulator. Moreover, the state system could be financially impaired as insurance companies subject to a federal charter would no longer pay regulatory fees and assessments to the states.

Federal regulatory primacy would effectively necessitate that the federal regulator's policies would preempt state regulators.

The OFC concept is strongly opposed by the National Association of Attorneys General, which has long been a defender of America's consumers. The Attorneys General have pointed out that OFC would "create an additional federal bureaucracy, all without consumer or constituent demand for such a creation" and that it "would bifurcate insurance regulation and result in a tangle of federal and state directives that would promote ambiguity and confusion in the marketplace..."

Some believe that federal regulation is needed to enhance the global market for insurance in that our 50-state national system of regulation serves as a trade impediment. But the U.S. has done well in trade talks relating to financial services, and many of the leading insurers in the United States are foreign-owned. The U.S. government does not need to regulate the insurance industry to adequately represent its interests on the global stage.

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The AIG Experience

Even the problems of AIG highlight the strengths of state insurance regulation. AIG's insurance operations were not the cause of its problems. The true causes were problems with its Financial Products division and the rush of others to disengage from the company once its credit ratings were downgraded.

The strength and health of AIG's property and casualty insurance units prove that state regulators had a better handle on their end of the business than federal regulators overseeing the banking and securities markets.

There is no reason to believe that federal insurance regulation, either through an industry-supported measure that would allow companies to "regulator-shop" through an optional federal charter or through mandatory federal regulation, would have handled AIG's issues in a more effective way than state regulators.

