Statement for the Record

Property Casualty Insurers Association of America (PCI)

Hearing on the Financial CHOICE Act

House Committee on Financial Services

April 26, 20017

The Property Casualty Insurers Association of America (PCI) strongly supports the Financial CHOICE Act, which would benefit consumers, uphold proven effective state-based insurance regulation, strengthen the financial marketplace, and at the same time reduce Federal regulatory overreach. PCI is composed of 1,000 member companies, representing the broadest cross section of insurers of any national trade association. PCI members write over $200 billion in annual premium in the U.S. and around the world, including 35 percent of the nation's property casualty insurance. Member companies write 42 percent of the U.S. automobile insurance market, 27 percent of the homeowners market, 33 percent of the commercial property and liability market and 34 percent of the private workers compensation market.

Regulatory compliance costs for insurers have been skyrocketing, increasing 19% over the last two years.\(^1\) Over 13,000 pages of new Dodd-Frank Act regulations have been imposed since 2009, and the burden has been especially taxing for small insurers who have to reallocate three times as much of their revenue on compliance costs as large financial companies.\(^2\) While insurance has been successfully regulated at the state level for over 160 years, Dodd-Frank has created extra layers of federal banking related regulation that have spilled over into insurance that often duplicate or undermine consumer-focused state regulation. PCI greatly appreciates the Committee’s work in the last Congress to enact the Policyholder Protection Act, which reaffirmed that state regulators have primary authority to resolve failing insurers and to protect insurance consumer where the insurer is affiliated with a bank or thrift that is subject to federal regulation.

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\(^2\) Id.
Many community financial institutions are being hit particularly hard. For example, one PCI member insurer has a very small community depository institution with only $30.5 million in assets—less than 0.2 percent of the assets of the holding company. Since the beginning of its regulation under the Federal Reserve, this company has had significantly increased administrative burdens on their compliance and regulatory staff. In fact, twenty-five percent of its regulatory and compliance staff time is now spent communicating with the Federal Reserve on regulation of an entity that comprises only 0.2 percent of the company’s assets. Federal Reserve Board Governor Jerome Powell just last week acknowledged that “In too many cases new regulation has been inappropriately applied to small and medium-sized institutions. We need to go back and broadly raise thresholds of applicability and look for other ways to reduce burden on smaller firms.” Board Chairman Janet Yellen similarly stated in testimony for the Financial Services Committee that “rules and supervisory approaches should be tailored to different types of institutions.” Despite the increasing recognition of the suffocating regulatory burden on particularly smaller insurers and other community financial institutions, relief is unlikely unless and until Congress can clarify its regulatory priorities and eliminate Fed supervision of insurers or at a minimum make that supervision more proportional to the risk.

The Financial CHOICE Act includes several provisions that could reduce unproductive regulatory duplication and overreach and thereby support more financial activity and economic growth. At the same time, however, it assures the continued viability of our proven effective state-based insurance regulation.

In particular, the redesign of the Federal Insurance Office (FIO) would be a helpful start in refocusing federal involvement in insurance to become more supportive of existing state insurance regulation by requiring it to advocate on behalf of the proven effective U.S. insurance system against harmful international threats that would actually undermine our consumer protection and our competitive markets. PCI suggests several additional amendments to this portion of the CHOICE Act to further support state regulatory efforts to protect consumers and strengthen private competitive markets. PCI

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4 Statement by Janet L. Yellen, Chair, Board of Governors of the Federal Reserve System before the Committee on Financial Services, U.S. House of Representatives, September 28, 2016.
also strongly supports changes to the Financial Stability Oversight Council’s (FSOC) authority that recognize the consensus of insurance regulators and experts that traditional insurance is not systemically risky and state regulated insurers should not be forced under an additional layer of banking regulation merely because they are large and well diversified. PCI would suggest further amendments to the ongoing bank-like supervision of community insurers by the Federal Reserve Board to require more proportionality and risk-based supervision, with deference to insurance functional regulators.

PCI strongly supports provisions of the CHOICE Act that: (1) subject the Financial Stability Oversight Council’s (FSOC) funding to the appropriations process and reforming FSOC’s authority to designate firms as systemically important financial institutions; (2) requiring greater transparency in the federal agencies’ participating in international insurance standard setting negotiations; and (3) clarifying priorities of the Federal Insurance Office (FIO) and requiring it to consult with state regulators (as part of the restructuring of FIO and FSOC’s Independent Member with Insurance Expertise). The following will summarize several key amendments to the CHOICE Act, which we believe would improve an already excellent bill.

**Redefine and Limit the Role of Federal Insurance Office**

The CHOICE Act already limits the role of FIO and merges it with the Office of the Independent Member with Insurance Expertise. However, PCI recommends that FIO’s role be further limited to international functions only and that its domestic functions be eliminated entirely. The primary reason Congress created the Federal Insurance Office (FIO) was to work with the states to provide a stable and consistent voice for the U.S. to support our regulatory system in international insurance discussions. That is still an appropriate role for FIO (or a successor entity).

But additional domestic mandates that were not included in initial FIO proposals were subsequently layered on that can undermine, conflict with or duplicate core activities of state insurance regulators. For example, state insurance departments have conducted numerous studies on auto insurance rates. Every state has extensive laws and regulations governing auto insurance underwriting accompanied by rate approval authority and antidiscrimination laws. The auto insurance marketplace is one of the most competitive commercial sectors with almost
no availability problems. However, even though the states are continuing to vigorously monitor the marketplace and issue periodic data calls, FIO duplicated state efforts, imposed its own studies, triggered a series of data calls in addition to what states already were requesting, and created a conflicting Federal definition of affordability.

FIO issued several other reports that gratuitously criticized state regulation, ignoring such metrics and the large amount of competition, the extensive consumer protection laws and the few consumer complaints. FIO has also initiated similar dueling data calls with the states on terrorism insurance, despite specific statutory direction to coordinate data collection through the state regulators. FIO is not a regulator, but its subpoena authority to compel responses to data calls implies regulatory authority that is not in FIO’s mandate and that is appropriately the purview of state regulators and other law enforcement entities. State insurance commissioners rely on 11,300 staff to protect insurance consumers and regulate insurance market activities and should not be undermined by a Treasury office with fewer than a dozen.\(^5\) The states collectively spend in excess of $1 billion regulating insurers\(^6\) and the National Association of Insurance Commissioners has a 2017 budget of $101.9 million and a staff of roughly 490 on top of that.\(^7\)

In addition to refocusing FIO (or a successor entity) on international activities, Title V of Dodd-Frank should further be amended to: (1) eliminate FIO’s authority to issue duplicative data calls and its unprecedented subpoena authority; (2) limit FIO’s headcount to its international staff; and (3) require FIO to consult with and represent the views of the state insurance regulatory community in international negotiations and discussions and provide greater congressional oversight of and transparency on international insurance standards setting processes.

\(^6\) *Id.*
\(^7\) NAIC Budget, 2017.
Require Targeted and Proportional Regulation of Insurance Companies Subject to Federal Reserve Board Supervision

The Board of Governors of the Federal Reserve System (Federal Reserve) was granted jurisdiction over insurance companies that are affiliated with thrift institutions. Only 14 remain, of which many only have tiny depository institutions. Nonetheless, the Federal Reserve supervision is quite onerous. Legislation is needed to provide for more tailored and proportional supervision of the depository institution -- and not the business of insurance, which has robust holding company supervision run by state-led supervisory colleges. As noted above, current Federal Reserve regulation is often not proportional and results in tremendous costs to the affected insurer. Consumer costs are unnecessarily increased as a result of companies having to expend and often waste significant resources for inside and external counsel to interpret and respond to requests for information or interpretation of rules, some of which are duplicative to their current OCC and state regulatory requirements.

The CHOICE Act should therefore explicitly require more targeted and proportional Federal Reserve regulation of insurance companies only to the extent necessary to regulate the affiliated depository institution. This would be entirely consistent with recent comments from high level Federal Reserve officials that supervision should be appropriately tailored. PCI will be pleased to work with Committee and its staff on suggested legislative language.

Restrict Federal Reserve Ability to Conduct Examinations of Insurers Controlled by Banks or Thrifts

The Federal Reserve Board should not be permitted to conduct examinations of, or require reports from, any insurance company that is controlled by a bank or savings and loan holding company or of a company (and its subsidiaries) that simply holds the shares of the insurance companies. Under current law, the Federal Reserve may obtain information about the financial condition and activities of insurance companies that are subsidiaries of bank and savings and loan holding companies from state insurance authorities, who have complete authority to examine insurance companies and obtain reports regarding their activities. The Federal Reserve
can avoid duplicating state efforts by obtaining information directly from state insurance authorities rather than imposing additional burdens on insurance companies and their consumers.

Within the insurance sector, regulatory overreach and duplication limits insurers ability to grow their business and invest in innovation. Unnecessary or duplicative regulatory requirements imposed on insurers add costs that are ultimately paid by personal and commercial consumers through higher premiums. These costs in turn reduce productivity and prevent more beneficial expenditures such as businesses investing in research and offering new products or services and related job creation.

Rising regulatory costs that create higher costs for consumers restrict their ability to buy more beneficial coverage. PCI, in conjunction with the Ward Group (AON Hewitt), conducted a corporate/regulatory compliance cost survey in 2016 which showed these expenses continue to increase annually, including a 19 percent overall increase from 2013 to 2015. In addition, because regulatory costs disproportionately impact small and medium-sized insurers, they can force consolidation and reduce competition.

PCI recommends that the Bank Holding Company Act and the Home Owners’ Loan Act should be amended to more appropriately target the Federal Reserve’s examination authority for insurers controlled by a bank of thrift to focus on systemic risks or risks to the federal deposit insurance fund. PCI will be pleased to work with the Committee and its staff on suggested legislative language.

**Elimination of Federal Reserve Authority Over Insurers That Are Holding Companies**

Some insurance holding companies now supervised by the Federal Reserve have an insurance company as the controlling entity. In this case the primary functional regulator, the insurer’s state insurance department, is supervising the entire group, and Federal Reserve supervision
risks duplication and conflict. The Bank Holding Company Act and the Home Owners’ Loan Act should be amended to provide that an insurance company that (1) controls a bank or another bank holding company is not a bank holding company for purposes of the Bank Holding Company Act, or (2) controls a savings association or another savings and loan holding company is not a savings and loan holding company for purposes of the Home Owners’ Loan Act if it is principally engaged in the business of insurance. A company should be deemed to be principally engaged in the business of insurance if the company’s assets attributable to the company’s insurance activities are more than 50 percent of the consolidated assets of the company. If the insurance company is not a bank holding company, a subsidiary of the company (such as an intermediate company that directly or indirectly control the bank or savings association) also will not be a bank or savings and loan holding company.

The Bank Holding Company Act and the Home Owners’ Loan Act should be amended to eliminate Federal Reserve authority over controlling insurers. PCI will be pleased to work with the Committee and its staff on suggested legislative language.

**Reform the Financial Stability Oversight Council (FSOC), Eliminate Non-Bank Systemic Risk Designations and Strengthen the Independent Insurance Expert**

FSOC has designated multiple insurance companies as SIFIs (systemically important financial institutions) over the objection of its insurance expert and the state regulators. In addition, it has failed to create uniform criteria for designation or a clear and unambiguous exit ramp, and its procedures lack fundamental transparency.

There may continue to be a role for FSOC in “looking over the horizon” and coordinating with functional regulators, including state insurance commissioners. For these reasons, PCI supports CHOICE Act provisions that retain the FSOC, but limit its ability to designate systemically important financial institutions. If FSOC is continued, however, the Independent Insurance Expert’s office should be enhanced with employees that are selected and managed by the
Independent Expert, not by Treasury, and the office should be funded independent of the Treasury Department. The Independent Insurance Expert’s office is disadvantaged in comparison with other FSOC members by its lack of independent staff and resources. PCI also recommends that a representative of the state insurance regulatory community should be added as a voting member of FSOC. In addition, PCI has recommended the creation of a State-Federal Insurance Coordination Partnership to provide a structure under which FIO (or a successor agency) can coordinate with states and better represent state regulators views in international discussions.

Other CHOICE Act Provisions
PCI also strongly supports several non-insurance-specific provisions of the CHOICE Act, including, (1) requiring federal financial regulators to conduct a cost-benefit analysis before issuing rules; (2) increasing the accountability of the Consumer Financial Protection Bureau (CFPB), including repealing the CFPB’s authority to band financial products it finds “abusive,” and clarifying that insurance is beyond the CFPB’s jurisdiction and (3) elimination the *Chevron* deference doctrine under which the courts defer to agency interpretations in judicial review of federal financial agencies’ rules.

Conclusion
PCI strongly supports the regulatory improvements embodied in the Financial CHOICE Act, which could be further strengthened by the recommended amendments. If enacted, the legislation will better focus regulatory efforts, better protect state-based consumer protections and better support a competitive U.S. insurance market.