Consumer Federation of America

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COMMENTS TO THE FEDERAL INSURANCE OFFICE ON HOW TO IMPROVE THE SYSTEM OF INSURANCE REGULATION IN THE UNITED STATES

DOCKET NO. TREAS-DO-2011-0010

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DECEMBER 7, 2011

The Dodd-Frank Wall Street Reform and Consumer Protection Act requires the Federal Insurance Office (FIO) to study how to improve insurance regulation.[1] The Consumer Federation of America[2] submits the following comments in response to twelve questions asked by the FIO, as required by this mandate.

SUMMARY OF RECOMMENDATIONS:

Insurance regulation in most states today fails to adequately protect consumers. This failure is the result of several factors, including:

- Commissioners typically serve very short terms and do not have time to be more than caretakers of a flawed regulatory structure;
- Commissioners and high-level staff often do not have an independent perspective regarding insurance regulation, because they move frequently back and forth through the "revolving door" between industry and regulatory positions.
- Commissioners often refuse to address the extraordinary imbalance that exists between insurance and consumer interests by actively promoting consumer protection measures. These officials typically view their role as judicial in nature, deciding between competing interests. They fail to recognize that there is no organized consumer presence on insurance regulation in most states. As a result, most insurance departments hear exclusively or mainly from well-financed insurance interests promoting their policy agenda, against little or no opposition.
- Where commissioners are interested in promoting meaningful consumer protection measures, their states typically do not devote adequate resources to this purpose. [3]

The combined result of these factors is that Commissioners often do not have the will to take on the powerful insurance industry when it is opposed to increased consumer protection measures.

CFA recommends that the FIO study several harmful practices that result from inadequate state regulation, including the almost complete absence of a meaningful and sustained focus on the specific problems of low- and moderate-income (LMI) consumers. In particular, we strongly suggest that the FIO examine the powerful and often damaging impact on consumers of computer systems and models leased to insurers by unregulated vendors that affect underwriting, rating and claims. These include credit scoring and other data-mining models, Catastrophe (CAT) models used to price hurricane and earthquake risk) and claims settlement system like Colossus, Claims Outcome Advisor and Xactimate.

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[1] Section 313(p) of Title 31 of the United States Code, as codified by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111– 203).
[2] The Consumer Federation of America is a nonprofit association of nearly 300 consumer groups that was founded in 1968 to advance the consumer interest through research, advocacy, and education.
3 J. Robert Hunter, FCAS, MAAA, "A Failure of Oversight In Need of Rescue: Insurance Regulation," Fall 2011 edition of the *Government, Law and Policy Journal of the New York State Bar Association* (publication pending).

CFA research has demonstrated conclusively that rigorous, balanced regulation, such as the auto insurance regime enacted in 1988 by California voters under Proposition 103, is far and away better for consumers and results in a highly competitive and profitable private insurance market.[4]

Given its statutory mandate, the FIO has a number of excellent opportunities to positively affect state consumer protection regulation through high-quality research, data collection and analysis:

- Research issues that adversely affect consumers today, such as the disparate and often unfair treatment of LMI consumers in the underwriting and rating of auto and other insurance products, the impact of unregulated models on consumers, how to make insurance sales, pricing and claims processes less opaque, the data that states need to make effective consumer protection decisions, and how to redress the imbalance of power at the state level between insurers and consumers.
- Collect data that can identify problems with more precision and help craft solutions to those problems. FIO should collect data similar to what bank regulators are required to gather from lenders under the Home Mortgage Disclosure Act (HMDA) as the first step in identifying and correcting many current insurance abuses that affect America's LMI consumers. For example, the FIO could collect data on why credit-related insurance is often so costly and inefficient, why lower income consumers sometimes pay more for lower levels of auto insurance coverage than for higher levels, whether classifications that have a disparate impact on LMI consumers are affecting their access to this coverage, and how to make insurance prices and products more transparent to consumers.
- Analyze these data and provide strong recommendations for state, or, if necessary, federal action. (It is very clear from the history of insurance regulation that federal interest in an insurance issue usually prompts states to act fast.)

Other opportunities for the FIO to improve consumer protection are discussed in the answers to its twelve questions, below.

1. Systemic insurance regulation with respect to insurance.

There are some significant systemic risks associated with insurance, for which regulation is necessary. These include the potential failure of large reinsurers, which could produce a domino effect on the primary market, the fact that guarantee fund assessments are not prefunded in virtually all states and could impact the stability of the remaining insurers in a market, and some life insurance investment issues. Concentration among insurers that sell annuities, mortgage guarantee insurance, and title insurance may also necessitate systemic regulation.

See response to question 12 for more information on this subject.

[4] J. Robert Hunter, Consumer Federation of America, "State Automobile Insurance Regulation: A National Quality Assessment and In-Depth Review of California's Uniquely Effective Regulatory System," April 2008, p. 42-48.

2. **Capital standards.**

Insurers must be required to comply with high standards. A national minimum capital standard would help achieve this goal, particularly because of the emerging use of captive insurance companies to write individual insurance through captive reinsurers fronted by a licensed insurer. Unfortunately, the competition among states to lure captive insurers in-state, starting with Vermont, has led to relaxed regulatory and solvency standards for some captive insurers. The advent of captive reinsurers covering individual risks (such as credit insurance on individual credit transactions) is a greater risk to consumers than "traditional" captives that cover only the parent company.

3. **Consumer protection, including gaps in state regulation and access by traditionally underserved communities and consumers, minorities and low- and moderate-income persons to affordable insurance.**

Consumers in most parts of the country receive inadequate regulatory protection from many abusive practices, including unjustifiably high rates, unfair or discriminatory rates (particularly for LMI consumers), improper underwriting standards and claims' abuses. Research by CFA has demonstrated that California leads the nation in regulation that produces demonstrable consumer benefits, including lower rates, protection from abusive rating practices, and competition.[5] This study of data from every state and the District of Columbia found that, as regulatory standards in California were strengthened, the overall increase in prices decreased over time, while insurer profits stayed relatively constant. Competition stayed robust as well. California has emerged as the best state for insurance consumers, with the most stringent regulation of price and product. Over the 16 years studied, California auto rates rose only 12.9 percent, as rates nationally increased 50.2 percent. This was the lowest rate of change in the nation, yet profits for auto insurers in California over the preceding years was 25 percent higher than the nation. California, measured by standard statistical techniques, was the fourth most competitive state for auto insurance in America. How did California achieve this powerful result over insurer opposition? It did not happen in the state legislature, which soundly defeated similar reforms under pressure from the industry. The force for change was the people themselves, who passed Proposition 103 in November 1988.

Abusive or unfair practices that harm LMI consumers are a particular concern for CFA and present a real opportunity for effective federal research, analysis and data collection. For example, many insurers use a number of classifications that have a disparate impact on LMI consumers and that can lead to unjustifiably high rates for them, including credit scores, prior insurance bodily injury (BI) limits, breaks in coverage, occupation and education. This, coupled with inattention by the states, puts LMI consumers at great risk.

Auto insurance is especially important for LMI households.[6] Nearly all car owners are required by state law to purchase liability coverage, all those financing purchases are required by lenders to have collision and comprehensive coverage.

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[5] Ibid, p. 21.

[6] Because of the nature of the data available, these comments treat LMI households as those in the two lowest income quintiles. Recently the income breaks have been at about $20,000 and $40,000.

These insurance coverages are relatively costly. The federal government's Consumer Expenditure Survey suggests that, in 2009, LMI households spent $36 billion on auto insurance premiums.[7] This expenditure dwarfs LMI spending, in the same year, of $5 billion for automobile financing and $6 billion for life and other personal insurance premiums. It also greatly exceeds the estimated $9 billion in payday loan interest and fees paid by all consumers the previous year.[8] LMI auto insurance premiums were even about three-fifths of the amount of all LMI spending on mortgage financing ($55 billion) in 2009.

But the states, with the notable exception of California, have done little to address the problems that LMI consumers face in auto insurance.

A large majority of LMI households own cars. Almost all LMI drivers are required to purchase auto insurance. Especially during the recent recession, most LMI households have faced severe income constraints that make it difficult for them to afford auto insurance. All households in the lowest-income quintile have incomes below about $20,000 and average incomes, according to the 2009 CES, of just under $10,000. And all households in the second lowest-income quintile have incomes of about $20,000 to $40,000, and average incomes of just over $27,000. [9] According to the 2009 Consumer Expenditure Survey, the average annual auto insurance spending per household in low-income households (lowest income quintile) was $476 and in moderate-income households (second income quintile) was $995.[10] Yet, since many of these households did not own a car or carry insurance, these costs were higher for those who did. Adjusting these numbers, using car ownership statistics in the 2007 Survey of Consumer Finances, yields average annual premiums of $744 for low-income car owners and $1157 for moderate-income car owners.[11] Since some of these car owners carried no insurance, the annual expenditures of those who did were even higher.

There is evidence that reasonably priced insurance is less available in low-income areas, and to a lesser extent in moderate-income areas, than in higher-income areas. For example, throughout California in 1995, underserved communities included 16 percent of the state's population and 13 percent of registered vehicles, but only six percent of auto insurance policies sold. Major insurers such as State Farm (2.6 percent) and Allstate (5.2 percent) maintained proportionately fewer offices in these underserved areas than throughout the state.[12] By 2007, the percentage of policies in underserved areas had grown to ten percent, and State Farm now had 5.7 percent of their offices in these areas while Allstate had 4.7 percent.[13] A more common

[7] U.S. Department of Labor, Bureau of Labor Statistics, Consumer Expenditure Survey for 2009 (www.bis.gov/cex/).
[8] Stephens Inc., Payday Loan Industry Report, April 17, 2008, p. 34.
[9] Brian Bucks, Arthur B. Kennickell, Traci L. Mach, Kevin B. Moore, "Changes in U.S. Family Finances from 2004 to 2007: Evidence From the Survey of Consumer Finances," Federal Reserve Bulletin (Feb. 2009), p. A31. U.S. Bureau of the Census, American Housing Survey for the United States 2009 (www.census.gov/hhes/www/housing/ahs/datacollection.html).
[10] U.S. Department of Labor, Bureau of Labor Statistics, Consumer Expenditure Survey for 2009 (www.bis.gov/cex/).
[11] Bucks, loc. cit., p. A31.
[12] California Department of Insurance, 1996 Commissioner's Report on Underserved Communities, Tables C and E.
[13] California Department of Insurance, 2008 Commissioners' Report on Underserved Communities, pp. 22 and 28.

way for individual insurers to effectively deny auto insurance, though, is to grossly overprice it. For example, liability premiums for the Compton woman from 49 insurers were less than $1500, but Unigard's premium was $2800. Similarly, premiums for standard coverage for the same woman from 48 insurers were less than $3100, but Viking's premium was $4409, and Unigard's premium was $4682.[14]

Another practice of some insurers, which tends to discriminate against LMI car owners, is charging higher premiums for minimal liability coverage than for standard coverage. Research by CFA in 2011 using information made available by the Texas Department of Insurance reveals, for example, that two major insurers would charge a single female, age 25-64 living in low-income areas in Dallas, San Antonio, and Houston and driving a 2007 Toyota Camry with no traffic violations, more for coverage with 30/60/25 limits than for 100/300/100 coverage. Allstate would charge $481 annually for minimal coverage versus $454 for standard coverage in Dallas, $412 versus $385 in San Antonio, and $481 versus $454 in Houston. Nationwide would charge $563 for minimal coverage versus $504 for standard coverage in Dallas, $427 versus $380 in San Antonio, and $673 versus $598 in Houston. This pricing pattern also exists for a married female and a young male. These differences suggest disparate treatment of LMI households, which are far more likely to purchase minimal liability coverage than are higher-income households. While the differences may reflect, all or in part, actual losses, it is unconscionable that insurers or their agents would offer less coverage at higher rates.[15] This is straightforward abuse of the poor.

More costly to LMI motorists than these practices, though, is the widespread use of rating factors -- such as residence, education, occupation, and credit rating -- that act as proxies for household income. A 2006 price comparison by CFA of Allstate, GEICO, and Progressive in twelve metropolitan areas found significant differences not only between areas but also within areas. A policy sold in lower-income neighborhoods ranged from eight to 94 percent more expensive, depending on the metropolitan area, than the same policy offered in upper-middle neighborhoods in the same urban area.[16] In a 2006 news release based on documents revealing GEICO's extensive use of education and occupation as the basis for insurance rates and eligibility, CFA showed that those with less education and working in lower skilled occupations would pay premiums that were, on average, 40 percent higher.[17]

Moreover, there is some agreement that, because lower-income consumers need and are legally required to purchase liability coverage in most cases, it is neither fair nor socially sensible to force these families to spend much more than higher-income households for the same coverage. That is why no state permits household income to be used directly as a rating factor.

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[14] California Department of Insurance, 2011 Auto Insurance Rate Comparisons.

[15] Texas Department of Insurance, HelpInsure.com. Research in New York and California insurance department databases found no instances where, for the same individual, there was an inverse relation between coverage and price. Research on the Allstate and Nationwide websites for nine cities also found no instances of an inverse relationship, but also discovered substantial variation in this comparison, including differences as little as two percent and as large as 35 percent.

[16] Matt Fellowes, From Poverty Opportunity: Putting the Market to Work for Lower Income Families, The Brookings Institution (2006), pp. 37-39.

[17] Consumer Federation of America, “GEICO Ties Insurance Rates to Education Occupation,” March 20, 2006. http://www.consumerfed.org/pdfs/auto_insurance_GEICO_release032006.pdf

The principle disagreement is whether high-risk, lower-income households should be subsidized mainly through lower rates, usually resulting in higher rates for other insureds, or through special state-funded programs.[18]

There is also some agreement that ratemaking should be influenced largely, if not entirely, by factors over which individual motorists have some control, such as the cars they drive, and how far and how safely they drive them. That was an important part of California's Proposition 103. There is also some awareness, though, of the limitations of these factors in predicting risk. Most motorists, for example, do not have sufficient accident experience to allow adequate differentiation of risk.[19] However, a new emphasis on and ability to measure how far and safely a car is driven, though controversial, does offer potentials to more accurately link rates to individual risk.

The Dodd-Frank Wall Street Reform and Consumer Protection Act provides the FIO with significant, prominent authority "to monitor the extent to which traditionally underserved communities and consumers, minorities and low- and moderate-income persons have access to affordable insurance products regarding all lines of insurance."[20] We urge the FIO to use this authority to begin to collect and evaluate data by census track regarding access to affordable, fairly rated insurance, just as banks must under the Home Mortgage Disclosure Act (HMDA). Solving the problems of LMI insurance consumers starts with these data being available.

We also urge the FIO to undertake efforts to analyze the impact on consumers of computerized models and programs sold by private vendors to insurers for tasks ranging from modeling hurricane risk to calculating claims payments. These systems are unregulated today, despite the fact that they have an enormous impact on rates charged to consumers, often in ways to systematically harm consumers.

In the last decade, insurers have been using computerized claims' systems that often produce a range of settlement offers. These systems, the most common of which is "Colossus", evaluate general damages for many bodily injury claims, such as pain and suffering and anguish. They are not used, however, to estimate "special" damages, such as past or future bills related to losses and reductions in wages, or regarding liability, related questions (such as comparative negligence) or on related issues like the credibility of witnesses.

Here is how Colossus typically works. In adjusting a bodily injury claim, the adjuster sorts through medical records and determines which of the approximately 600 Colossus injury codes best reflect the bodily injuries sustained by the consumer. These codes are then entered into the Colossus software. Depending on the severity value accompanying the injury code and

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[18] See Martin J. Katz, "Insurance and the Limits of Rational Discrimination," Yale Law and Society Review, v. 8, n. 2 (1990), pp. 436-458. See also: William R. Keeton and Ewen Kwerel, "Externalities in Auto Insurance and the Underinsured Driver Problem," Journal of Law and Economics, v. 27, n. 1 (April 1984), pp. 149-179. Suzanne Yelen, "Withdrawal Restrictions in the Automobile Insurance Market," The Yale Law Journal, v. 102, n. 6 (April 1993), pp. 1431-1455.
[19] See Kenneth Abraham, The Liability Century: Insurance and Tort Law from the Progressive Era to 9/11 (Harvard University Press, 2008), ch. 3. Also see Scott E. Harrington and Helen I. Doerpinglaus, "The Economics and Politics of Automobile Rate Classification," The Journal of Risk and Insurance, v. 60, n. 1. (1993), pp. 59-84.
[20] 31 U.S.C. 313 (c)(1)(B).

the dollar value that has been assigned by the insurance company for each severity value point, Colossus provides a dollar value range to the adjuster for general damages.Some insurers tune the programs so that the claims offers that are made are “low-balled” to save costs, even though a higher offer may be justified for particular consumers. Further, adjusters sometimes receive incentives for settling claims at or near the range stipulated by Colossus.

Credible concerns about computerized claims’ systems have been raised in litigation against many of the largest insurers in the country, stating that these systems have been calibrated to systematically underpay claims. Large settlements regarding these concerns have been reached with a number of insurance companies. In at least one case, a jury granted a very large award against Farmers Insurance.

CAT models are used to build hurricane and earthquake future costs into insurer pricing for homeowners insurance. State insurance departments are not equipped to fully understand the models and, importantly, the assumptions underlying the models results. Only Florida has a state system in place to scientifically review models and even that fails to influence much of pricing since reinsurers use unregulated, untested models and the primary insurers are permitted to pass these pricing decisions along to consumers without question. Insurers also use credit-score models; these models significantly impact auto and home insurance prices and are unregulated.

State insurance regulation often produces poor overall consumer protection results because of excessive industry influence on legislation and regulation, inadequate resources, timid regulators and inadequate consumer representation before state legislatures and regulators. Research into how to correct or, at least, mitigate the extremely unbalanced political situation is needed. Ways of encouraging strong consumer participation at the state or federal level is vital to any solution to inadequate consumer protections in insurance. The one thing that motivates states to act, even against industry power, is protection of their “turf.” Threat of federal action causes a state response. The Commissioners acknowledge this.[21]

Credit insurance is an example of a line that has been poorly regulated over a long period of time by the vast majority of states, to the harm of LMI consumers. One reason for this is that insurance products related to credit transactions (such as credit, mortgage, forced-place and title insurance) often fall into a regulatory gap between insurance and bank regulators. Incomplete oversight by these two sets of regulators has led to high “kickback” payments by lenders to insurers and to “reverse” competition that drives up reimbursement to insurers and rates to consumers. Insurance commissioners often approve unjustifiably high rates because the costs incurred by insurers (expenses, not claims) are real. They refuse to look deeper to see that these costs consist of commission “kickbacks” paid by lenders to insurers, or from below-cost loan tracking services owned by or affiliated with bank-owned captives in places like Vermont, because that is the jurisdiction of banking regulators.

Given the power that the insurance industry has in most states, it is unlikely that many state legislatures will act on their own to prevent insurer abuses. The most likely to reform at the

[21] “Commissioners generally agree that the threat of federal regulation has stimulated more effective state regulation of insurance and more responsiveness to insurance-related public policy issues on the part of insurance companies.” Robert H. Miles & Arvind Bhambri,, *The Regulatory Executives*, (Sage Publications, 1983).

state level is through voter initiatives, as happened in 1988 in California when Proposition 103 was enacted.[22] However, these initiatives are expensive and rare in states that allow them, and many do not. Federal minimum standards or the possibility of federal action on some or all of state regulation would likely result in significant movement by the states.

4. **The degree of uniformity of state regulation, including the identification of, and methods for assessing, excessive, duplicative or outdated insurance regulation or licensing.**

Words like "modernization," excessiveness," and "outdated" are dangerous as used by insurance industry representatives, because their end-goal is often deregulation that does not adequately protect consumers. We vigorously disagree. Our research shows that strong regulation significantly improves results for consumers and increases competition. This does not mean that consumer organizations support regulatory inefficiency, as consumers pay for that. But any move toward regulatory uniformity for consumer protection must be at the highest levels, not a low level. In fact, we have noticed that insurer' enthusiasm for uniformity seems to disappear when the discussion involves raising standards to the level of states like California. Please see the attached regulatory principles for CFA's ideas on how to achieve uniformly high regulatory standards. We believe a strong case exists for consumer protections, including prior approval of classes and rates.[23]

5. **Regulation of insurance companies and affiliates on a consolidated basis**.

Consolidated regulation, if properly conducted, could be an effective tool for combating the disparate or discriminatory treatment of some consumers. This occurs when an applicant is placed with one (higher cost) insurer even though the applicant qualifies for a better deal with an affiliated "running mate." A minimum standard that ended this practice would be a very positive development for many lower income or minority consumers. CFA obviously supports strong solvency regulation, and the states have done quite well in this area. However, if systemic risk is federally regulated, a federal role in solvency regulation is likely needed.

See response to question 12 for more information regarding this question.

6. **International coordination**.

CFA is very wary of federal rules that might allow foreign regulators to reduce consumer protections in the United States in the name of regulatory uniformity and efficiency.

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[22] Of course, groups like Ralph Nader's organization, Consumer Watchdog, and others organized this effort. Money was raised (although the $2.9 million they raised was small compared to the $63 million industry-funded effort against the proposition) by the California organizations that took the issue to the public.

[23] J. Robert Hunter, Consumer Federation of America, "State Automobile Insurance Regulation: A National Quality Assessment and In-Depth Review of California's Uniquely Effective Regulatory System," April 2008, p. 83.

7. **Costs and benefits of potential federal regulation of insurance across various lines of insurance (but not health insurance).**

Federal regulation by line is not the only, or, necessarily the most useful or coherent way to consider dividing up federal and state regulatory approaches. Looking at a federal role by subject area might be even more productive. What do states do well or poorly? (See the chart following our response to question 12.) Are federal strengths in the areas of state weaknesses? Data collection and analysis is an area where the states generally do poorly, in which federal regulators might excel. Research into macro (national or international) trends would be much better done at the federal level, while micro (state or local) trends should be done by the states. Should the McCarran-Ferguson Act be fully or partially repealed? That is, has the antitrust exemption outlived any usefulness it might once have had? That is obviously a federal decision.[24]

What lines might be most ripe for a federal role? Credit-related insurance, as mentioned above, tops the list for CFA.[25] Catastrophe coverage would benefit from more expert, broadly based regulation. Regulation of complex, unregulated models that have been shown to harm consumers across state lines would be very helpful. As mentioned above, data collection and analysis could be an area where a federal role might be particularly helpful.

States doing well in protecting consumers (such as California on auto insurance) should not be undermined by any federal role. Therefore, a federal minimum standards bill would be an excellent approach, increasing protection where it is weak, without undermining excellent regulation. Rather than line-by-line, federal minimum standards for all lines or several would be a good idea.

CFA also believe that the burden must be on those who want to overturn many years of state regulation to show the public that they are not buying a "pig in a poke" with some form of federal regulation, even on the minimum standards CFA favors.

8. **Feasibility of regulating certain lines at the federal and the rest at the state level.**

It is possible to implement, depending on the line of insurance that is regulated and consumer protections that are provided. See responses to question 7 above.

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[24] CFA has long supported the repeal of the McCarran-Ferguson Act's antitrust exemption for the business of Insurance. This step is critically needed to address the anticompetitive practices of some in the insurance industry. Insurers should be required to obey the same antitrust rules as virtually all other commercial enterprises operating in the American economy. CFA research has concluded that the lack of antitrust law application to insurance has caused consumers to pay too much for insurance by, for instance, exacerbating periodic liability insurance cyclical price spikes. Rate bureau levels are set to assure that the least effective or most inefficient insurers are abil to thrive at the suggested price. See testimony of J. Robert Hunter before the U.S. Senate Judiciary Committee, October 14, 2009, http://www.consumerfed.org/elements/www.consumerfed.org/file/J%20%20Robert%20Hunter%20-%20Antitrust%20Senate%20McCarran%20Repeal%20Health%20Insurance%20Testimony%202009.pdf

[25] J. Robert Hunter, Testimony before the Committee on Financial Services of the U.S. House of Representatives, Subcommittee on Oversight and Investigations. "The Impact of Credit-based Insurance Scoring on the Availability and Affordability of Insurance," May 21, 2008.

9. **The potential ability of federal regulation to eliminate or eliminate regulatory arbitrage.**

If the federal government takes over all regulation or a line or a task, there is no arbitrage. Arbitrage exists when there is dual regulation that allows insurers to select whether they are regulated at the state or federal level. Insurers should not have such an option because, if they do, there is no way to stop arbitrage. Nonetheless, it would be bad for consumers if a federal system were created that undermines strong protections in the states, particularly if that federal regulation results in a uniformly low level of consumer protection.

10. **How foreign jurisdiction regulatory developments might impact potential federal regulation of insurance.**

CFA opposes any federal role that allows foreign regulation to in any way affect consumer protection regulation in the United States.

11. The ability of a potential federal regulator to provide robust consumer protection.

This is a difficult question since federal insurance regulation has an extremely circumscribed history and is more distant than are the states from affected consumers. The ability of a federal regulator to provide robust consumer protection also depends on several other factors, which are true for the states as well, including the authority of the regulator, the will of the regulator and the resources the regulator possesses. These are all unknowns when it comes to federal oversight. We know most states fail on one or more of these factors. This argues for the federal government to start in one area and see if it can raise rather than lower standards uniformly through minimum standards. A prime area for consideration of this approach would be credit-related insurance, including forced-placed insurance.

Since states do react when the federal government is involved, good research and analysis that leads to FIO proposals to strengthen consumer protections , delivered to the states or, especially, to Congress, could have significant impact, even if such changes were merely proposed. FIO efforts could produce results if it focused early on known problems that have fallen through state regulatory cracks, like unregulated models used by insurers, could produce fruit.

Further, FIO could offer significant benefits to Americans who must buy coverage due to state and/or lender requirements by proposing improvements in the transparency of products offered by insurers. Such improvements would be enormously important to consumers in the dismayingly complex insurance marketplace and the troubling claims process.

12. The potential consequences of subjecting insurers to a federal resolution authority.

The manner in which state guaranty funds operate today is very troubling. Consumers could be exposed to huge delays before they receive full recovery, if a large failure or series of failures occurred. Virtually all of the funds are created through a post-event assessment, which

puts some systemic risk into play if the insurers paying the assessments are also economically stressed. Lines of insurance with extreme concentration are particularly at risk..

The systemic risk regulator established by the Dodd-Frank Act – known as the Financial Stability Oversight Council (FSOC) -- must continue to have broad authority to determine when a systemically risky insurer would be subject to systemic resolution. Moreover, any federal entity with resolution authority should have authority to demand corrective action if an insurer is taking on undue financial risk. In that case, should the federal regulator simply supersede state regulatory authority or should they seek to work with state regulators? We think the systemic risk regulator has to have ultimate authority in such cases, particularly given the lack of independence of so many state insurance regulators.

Some in the insurance community have argued – correctly, to a degree[26] – that it was not AIG's insurance activity that created the systemic risk that prompted its rescue. Instead, it was AIG's ties to other financial institutions through hundreds of billions of dollars in unregulated credit default swaps that caused the government to conclude that a failure at AIG would have devastating consequences for the global financial system. Many observers have concluded that, although there are some very large insurers, their failure would be unlikely to pose a comparable systemic risk. Although there would doubtless be temporary market disruptions from such a failure, the existence of numerous competitors ready to step in and assume the coverage they provided would mitigate the risk to consumers. The existence of state guaranty funds is also cited as a factor that limits the systemic risk associated with an insurance company failure. Finally, state insurance regulators have been quick to note that capital standards, reserve requirements, and investment limitations imposed on insurers to guaranty their ability to pay claims have protected them from taking on the excessive risks that have proved so troubling for their colleagues in commercial and investment banking.

Although there is some validity to these arguments, they have their limitations. It is ironic, for example, that state regulators have boasted in Congress about the effectiveness of their capital and reserve requirements in stabilizing insurers, as several states acted quietly to massively loosen those requirements to make their domestic life insurers look better on their balance sheets. Meanwhile, the state guaranty funds may create the illusion of safety where it does not exist. While the funds <u>might</u> be able to absorb the failure of a single large insurer, it is almost certain that they would not be able to handle the simultaneous failure of several large insurers in a timely fashion. Moreover, there are other specialized insurers, most notably the bond insurers, whose role in the financial markets has clear systemic implications. The credit downgrade of bond insurers spilled over into the credit default swap market in ways that contributed to the freezing of credit markets. Clearly, enough insurance-related systemic risk potential exists for insurers to justify coverage by the FSOC. Moreover, to be effective, systemic risk regulation must focus not just on risks within large institutions, but also on risks in smaller

[26] It appears that some $21 billion in losses in the AIG life insurers "securities lending program" did occur and was the basis for some federal taxpayer-backed relief. The GAO report, "Financial Crisis: Review of Federal Reserve System Financial Assistance to American International Group, Inc.," of September 2011 also indicates that AIG's life insurance operations were in financial trouble during the financial crisis and that a downgrade in AIG's credit rating might have caused significant problems for life insurance companies. Indeed, in March 2009, the Federal Reserve Bank of New York obtained authorization to extend $8.5 billion in credit to life insurers, which was not used.

institutions or in particular markets with the potential to infect the broader market. Also, the use of reinsurance to spread risk around the world can also have systemic impacts on the primary insurance markets should one or more large reinsurers fail.

One of the misconceptions about systemic risk regulation is that its intent is to protect large financial institutions from failure. CFA is convinced that the possibility of failure must be restored in order to provide accountability for assuming excessive risks. To accomplish that goal, a key focus of systemic risk regulation must be on creating a mechanism to allow the orderly unwinding of large non-bank financial institutions comparable to the authority the FDIC already has with other financial entities. After all, it was the absence of such a mechanism that forced the government to improvise in devising its rescue strategies.

The question for the insurance industry is whether insurers would be covered by such a mechanism or whether they would continue to rely on state guaranty funds to serve this function. CFA has grave concerns about the adequacy of state guaranty funds, particularly with regard to their ability to handle the simultaneous failure of several large insurers. At a minimum, large insurers facing failure should be expected to rely on a federal mechanism and therefore should be expected to contribute to its funding, assuming it is to be funded through some form of insurance premium. An alternative approach, and one that would be clearer in its applicability, would be to expand access to the program to a larger population and to impose premiums based on the degree of risk posed by those institutions. If the program included regulatory authority to intervene in advance of a crisis to force corrective actions, insurers could expect greater federal involvement in certain types of regulatory issues.

CFA's concerns with the state guaranty associations are that the associations, being post-assessment plans in nearly every case (New York is the exception), are very vulnerable to a large failure. It is very possible that the system could be overwhelmed by a series of large failures and stop functioning to promptly restore policyholders and claimants to their pre-insolvency position in a timely way.[27]

The guaranty associations can assess for claims beyond the ability of a failed insurer. They do this by assessing the remaining, solvent insurers. So today, if several life insurers were in trouble, a string of failures would put a call for money on other already stressed insurers. To ease this problem, these assessments for money are capped at various percentages of premiums from the last (or recent) year(s) and that would mean that, once the limits on assessments are exceeded, claims and demands for money from an insured's account could not be fully paid. The risk is not just that the system taps insurers at a time of weakness, but that insureds, including individuals and businesses, might not be able to collect the money they need to get back to normal activity, adversely affecting the recovery of a stressed economy. Thus, the guaranty associations have a degree of systemic risk built into their structure.

Assessment limits vary. In most states, it is two percent of premiums from the previous year.[28] But there are exceptions. In Alabama, for example it is one percent of premiums from

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[27] Some will argue that the system could tolerate a large failure, but even they will admit that to do so would require freezing funds for quite a long time, likely bringing knock-on impacts to the economy.
[28] State-by- state data are available at www.nolhga.com/factsandfigures/main.cfm/location/lawdetail/docid/16.

the previous year. In California, it is one percent of the average of the premiums for the prior three years. In Connecticut it is two percent of the average premiums over the last three years. It would be reasonable to estimate the national assessment capacity at two percent of the latest year premium.[29]

The second limit on assessment is the state account structures that divide the life insurance premiums into various categories. For instance, Alabama has three accounts, life insurance, disability insurance and annuities.[30] Florida breaks it down as health, life and annuity. Sometimes life and annuity are combined in one account.

It is safe to say that the national assessment capacity is about $7.1 billion (this figure is calculated as two percent of the total of life and annuity premiums from 2009, $356 billion)[31]. This is a very high estimate of potential money available to help in the situation of life insurer and annuity insurer insolvencies in the first year because: (1) the premiums from the pre-funded state of New York are included; (2) two percent is more than would be achieved on average as discussed above; (3) some states split life and annuity into separate funds, further minimizing the available funds, and (4) the available premiums for assessment would drop because the amount of premium of the insurers that become insolvent (or appeal the assessment because of being in fragile solvency condition) being removed from the calculation.

Seven billion dollars would not go far should even one major insolvency involving a deep "hole" (shortfall) occur. Insureds would be unable to get their money out of the funds, perhaps for years. Some claims would not be fully paid (even without the insolvency funds melting down, there are limits on what these funds pay out – usually in the range of $100,000 to $300,000 per policy) perhaps for many years, if ever, in the case of a series of insolvencies.

CFA believes enhanced systemic risk enforcement is an essential component of regulatory reform and that the focus should be broad. As such, we believe it is both inevitable and appropriate that insurers be brought under a system of systemic risk regulation. Because issues of systemic risk regulation are directly relevant to the broader policy debate over insurance regulation, these two issues cannot easily be divorced. We would note, however, that those who have sought to use the focus on systemic risk regulation to argue for an optional federal charter have the issue exactly backwards. Whatever else it is, systemic risk regulation is not optional. For systemic risk regulation to be effective, the regulator must have broad authority to determine the scope and extent of their authority. Moreover, if we have learned nothing else from the current crisis, we should have learned that giving financial institutions the ability to choose their regulator seriously undermines the quality of oversight and the rigor of regulation. That, in turn, has the potential to create serious systemic risks.

The FIO should study the potential systemic risk of bond insurance, title insurance, mortgage guarantee insurance, reinsurance and life insurance investments in vehicles that might

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[29] In fact, this estimate is somewhat high as some states have a one percent assessment cap and others use averages, which, since premiums are growing, are lower than simple use of the latest year.
[30] The Account Structure information on a state-by-state basis is found at www.nolhga.com/factsandfigures/main.cfm/location/lawdetail/docid/1.
[31] *2010 Life Insurers Fact Book*, American Council of Life Insurers.

represent a systemic risk, such as mortgages. Reinsurance and retrocession spread risk around the world in ways that normally lower risk but could, in certain circumstances, cause massive failure if a series of major impacts were to be felt at once (i.e., a "black swan" series of events could cause great failure worldwide if reinsurance failed to deliver in its secondary market function). Major storms, earthquakes, terrorism attacks and other catastrophes could occur at about the same time that might bankrupt some of these significantly inter-connected secondary-market systems, for instance.

As stated above, some state regulators themselves have recently introduced an element of systemic risk because of their willingness to cut consumer protections for life insurance by slashing reserves and other dollars of policyholder cushion at this time of great risk. Several states have lowered capital and reserve requirements for life insurers despite the fact that the NAIC ultimately refused to do so. NAIC acknowledged that it had not done the due diligence necessary to determine if the proposed changes would weaken insurers excessively.

In summary, CFA has come to a number of conclusions about the proper role of systemic risk regulation of insurance:

1. Insurance should be covered by any systemic risk and resolution regulatory structure that Congress develops.
2. Systemic risk regulation of insurance must include monitoring and enforcement components that are mandatory for insurers, not optional. An optional approach to systemic risk will fail.
3. Systemic risk regulation of insurance should take into consideration bond insurance, title insurance, the possible impact on other financial sectors of the unavailability or un-affordability of certain lines of coverage (such as difficulties for banks in obtaining Directors and Officers Insurance), reinsurance, where very large risks are shared among many insurers, post-assessment guaranty funds and possibly other insurance risks.
4. The FSOC should monitor all, or nearly all, insurers and to determine whether they become systemically risky, either by growing to a size that makes it "too big to fail," by engaging in risky activities, or by entering into risky relationships with other players in the broader financial markets.
5. Regulation for solvency/prudential regulation should be moved over to federal control in order to properly understand and control risk.

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A major question is "can solvency regulation be separated from consumer protection regulation?"

Insurers argue that splitting solvency regulation from consumer protection regulation would be dangerous since consumer protection regulation would include regulation of rates so that the rate regulator, not being involved in solvency regulation, would have no pressure to keep rates adequate. We disagree.

First of all, our extensive search of large insolvencies over the decades has not found one insolvency in insurance history directly attributable to rate regulation. Congress has not found

such effects either, to our knowledge.[32] Secondly, our research into the best systems of auto insurance regulation found conclusive evidence that the state with the best consumer results, California, had the toughest rate regulation producing the lowest rate changes in the nation but very healthy insurer profits (and with the fourth most competitive auto insurance market in the nation as well). Third, any new system Congress develops will require close coordination between the federal regulator and the state regulators, at least through a lengthy transition period. No state would fail to respond to the federal regulator's call for a review of a situation that might be problematic from a solvency point of view. In fact, federal control of solvency would allow a national perspective on insurance trends that would help in controlling risk of solvency. One of the few times insurers might under price is at the end of the so-called "soft market" in the "cycle" of insurance profits. Property/casualty insurance profits are cyclical and the pattern typically is several years, around 8 to 10 years, of a soft market where prices are flat to down, followed by a short, 2 to 3 year hard market, where prices spike. A national solvency regulator would, for the first time, have the data and national focus to be ahead of the cycle and could alert states to upcoming price trends and conditions, thus easing the cycle's impact.

In short, there are simply no major, irresolvable issues stemming from splitting solvency from consumer protection when regulating insurance.

For More Information, please see the following documents available at www.consumerfed.org:

J. Robert Hunter, testimony on regulatory reform before the House Financial Services Committee's Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises, May 14, 2009.

- J. Robert Hunter, "A Failure of Oversight in Need of Rescue: Insurance Regulation," New York Bar Association Journal (Publication Pending).
- J. Robert Hunter, testimony on antitrust issues before the Senate Judiciary Committee, October 14, 2009.
- Letter from the Consumer Federation to the House Financial Services Committee on regulation of credit-related insurance products, July 29, 2009.
- Travis Plunkett testimony on regulatory modernization before the Senate Banking Committee, July 28 2009.
- Consumer Federation of America, "State Automobile Insurance Regulation: A National Quality Assessment and In-Depth Review of California's Uniquely Effective Regulatory System," April 24, 2008.

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[32] See Report to the Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, House of Representatives, "Insurance Regulation State Reinsurance Oversight Increased but Problems Remain." May 1990. http://archive.gao.gov/d31t10/141458.pdf.

COMPARING STATE AND FEDERAL REGULATORY CAPACITY AND EXPERTISE:

Item	Federal	State
Experience overseeing all aspects of insurance regulation?	No	Yes
Responsive to local needs?	No	Yes
Handle individual complaints promptly and effectively?	No	Some States
Limited impact if regulatory mistakes are made?	No	Yes
Not subject to political pressure from national insurers?	No	No
Not subject to political pressure from local insurers?	Yes	No
Efficient solvency regulation?	No	Yes
Effective guaranty in event of insolvency?	Yes	No
Adequately restricts revolving door between regulators and industry?	Maybe	No
More uniform regulatory approach?	Yes	No
Can easily respond to micro-trends impacting only a region or a state?	No	Yes
Can easily respond to macro-trends that cross state borders?	Yes	No
Has greater resources, like data processing capacity?	Yes	No
Systemic risk analysis and control	Yes	No
Web page information excellence	Maybe	Yes

Attachment 1

CONSUMER PRINCIPLES AND STANDARDS FOR INSURANCE REGULATION

1. Consumers should have access to timely and meaningful information about the costs, terms, risks and benefits of insurance policies.

- Meaningful disclosure prior to sale tailored for particular policies and written at the education level of the average consumer sufficient to educate and enable consumers to assess a particular policy and its value should be required for all insurance; it should be standardized by line to facilitate comparison shopping; it should include comparative prices, terms, conditions, limitations, exclusions, loss ratio expected, commissions/fees and information on seller (service and solvency); it should address non-English speaking or ESL populations.
- Insurance departments should identify, based on inquiries and market conduct exams, populations that may need directed education efforts, e.g., seniors, low-income, low education.
- Disclosure should be made appropriate for medium in which product is sold, e.g., in person, by telephone, on-line.
- Loss ratios should be disclosed in such a way that consumers can compare them for similar policies in the market, e.g., a scale based on insurer filings developed by insurance regulators or an independent third party.
- Non-term life insurance policies, e.g., those that build cash values, should include rate of return disclosure. This would provide consumers with a tool, analogous to the APR required in loan contracts, with which they could compare competing cash value policies. It would also help them in deciding whether to buy cash value policies.
- A free look period should be required; with meaningful state guidelines to assess the appropriateness of a policy and value based on standards the state creates from data for similar policies.
- Comparative data on insurers' complaint records, length of time to settle claims by size of claim, solvency information, and coverage ratings (e.g., policies should be ranked based on actuarial value so a consumer knows if comparing apples to apples) should be available to the public.
- Significant changes at renewal must be clearly presented as warnings to consumers, e.g., changes in deductibles for wind loss.
- Information on claims policy and filing process should be readily available to all consumers and included in policy information.
- Sellers should determine and consumers should be informed of whether insurance coverage replaces or supplements already existing coverage to protect against over-insuring, e.g., life and credit.
- Consumer Bill of Rights, tailored for each line, should accompany every policy.
- Consumer feedback to the insurance department should be sought after every transaction (e.g., after policy sale, renewal, termination, claim denial). The insurer should give the

consumer notice of feedback procedure at the end of the transaction, e.g., form on-line or toll-free telephone number.

2. **Insurance policies should be designed to promote competition, facilitate comparison-shopping and provide meaningful and needed protection against loss.**

- Disclosure requirements above apply here as well and should be included in the design of policy and in the policy form approval process.
- Policies must be transparent and standardized so that true price competition can prevail. Components of the insurance policy must be clear to the consumer, e.g., the actual current and future cost, including commissions and penalties.
- Suitability or appropriateness rules should be in place and strictly enforced, particularly for investment/cash value policies. Companies must have clear standards for determining suitability and compliance mechanism. For example, sellers of variable life insurance are required to find that the sales that their representatives make are suitable for the buyers. Such a requirement should apply to all life insurance policies, particularly when replacement of a policy is at issue.
- "Junk" policies, including those that do not meet a minimum loss ratio, should be identified and prohibited. Low-value policies should be clearly identified and subject to a set of strictly enforced standards that ensure minimum value for consumers.
- Where policies are subject to reverse competition, special protections are needed against tie-ins, overpricing, e.g., action to limit credit insurance rates.

3. **All consumers should have access to adequate coverage and not be subject to unfair discrimination.**

- Where coverage is mandated by the state or required as part of another transaction/purchase by the private market (e.g., mortgage), regulatory intervention is appropriate to assure reasonable affordability and guaranty availability.
- Market reforms in the area of health insurance should include guaranty issue and community rating and, where needed, subsidies to assure that health care is affordable for all.
- Information sufficient to allow public determination of unfair discrimination must be available. Geo-code data, rating classifications and underwriting guidelines, for example, should be reported to regulatory authorities for review and made public.
- Regulatory entities should conduct ongoing, aggressive market conduct reviews to assess whether unfair discrimination is present and to punish and remedy it if found, e.g., redlining reviews (analysis of market shares by census tracts or zip codes, analysis of questionable rating criteria such as credit rating), reviews of pricing methods, and reviews of all forms of underwriting instructions, including oral instructions to producers.
- Insurance companies should be required to invest in communities and market and sell policies to prevent or remedy availability problems in communities.
- Clear anti-discrimination standards must be enforced so that underwriting and pricing are not unfairly discriminatory. Prohibited criteria should include race, national origin, gender, marital status, sexual preference, income, language, religion, credit history, domestic violence, and, as feasible, age and disabilities. Underwriting and rating classes

should be demonstrably related to risk and backed by a public, credible statistical analysis that proves the risk-related result.

4. **All consumers should reap the benefits of technological changes in the marketplace that decrease prices and promote efficiency and convenience.**

- Rules should be in place to protect against redlining and other forms of unfair discrimination via certain technologies, e.g., if companies only offer better rates, etc. online.
- Regulators should take steps to certify that online sellers of insurance are genuine, licensed entities and tailor consumer protection, UTPA, etc. to the technology to ensure consumers are protected to the same degree regardless of how and where they purchase policies.
- Regulators should develop rules/principles for e-commerce (or use those developed for other financial firms if appropriate and applicable.)
- In order to keep pace with changes and determine whether any specific regulatory action is needed, regulators should assess whether and to what extent technological changes are decreasing costs and what, if any, harm or benefits accrue to consumers.
- A regulatory entity, on its own or through delegation to an independent third party, should become the portal through which consumers go to find acceptable sites on the web. The standards for linking to acceptable insurer sites via the entity and the records of the insurers should be public; the sites should be verified/reviewed frequently and the data from the reviews also made public.

5. **Consumers should have control over whether their personal information is shared with affiliates or third parties.**

- Personal financial information should not be disclosed for purposes other than the one for which it is given unless the consumer provides prior written or other form of verifiable consent.
- Consumers should have access to the information held by the insurance company to make sure it is timely, accurate and complete. They should be periodically notified how they can obtain such information and how to correct errors.
- Consumers should not be denied policies or services because they refuse to share information (unless information is needed to complete the transaction).
- Consumers should have meaningful and timely notice of the company's privacy policy and their rights and how the company plans to use, collect and or disclose information about the consumer.
- Insurance companies should have a clear set of standards for maintaining the security of information and have methods to ensure compliance.
- Health information is particularly sensitive and, in addition to a strong opt-in, requires particularly tight control and use only by persons who need to see the information for the purpose for which the consumer has agreed to the sharing of the data.
- Protections should not be denied to beneficiaries and claimants because a policy is purchased by a commercial entity rather than by an individual (e.g., a worker should get privacy protection under workers' compensation).

6. **Consumers should have access to a meaningful redress mechanism when they suffer losses from fraud, deceptive practices or other violations; wrongdoers should be held accountable directly to consumers.**

    - Aggrieved consumers must have the ability to hold insurers directly accountable for losses suffered due to their actions. UTPAs should provide private cause of action.
    - Alternative Dispute Resolution clauses should be permitted and enforceable in consumer insurance contracts only if the ADR process is: 1) contractually mandated with non-binding results, 2) at the option of the insured/beneficiary with binding results, or 3) at the option of the insured/beneficiary with non-binding results.
    - Bad faith causes of action must be available to consumers.
    - When regulators engage in settlements on behalf of consumers, there should be an external, consumer advisory committee or other mechanism to assess fairness of settlement and any redress mechanism developed should be an independent, fair and neutral decision-maker.
    - Private attorney general provisions should be included in insurance laws.
    - There should be an independent agency that has as its mission to investigate and enforce deceptive and fraudulent practices by insurers, e.g., the reauthorization of FTC.

7. **Consumers should enjoy a regulatory structure that is accountable to the public, promotes competition, remedies market failures and abusive practices, preserves the financial soundness of the industry and protects policyholders' funds, and is responsive to the needs of consumers.**

    - Insurance regulators must have a clear mission statement that includes as a primary goal the protection of consumers.
    - The mission statement must declare basic fundamentals by line of insurance (such as whether the state relies on rate regulation or competition for pricing). Whichever approach is used, the statement must explain how it is accomplished. For instance, if competition is used, the state must post the review of competition (e.g., market shares, concentration by zone, etc.) to show that the market for the line is workably competitive, apply anti-trust laws, allow groups to form for the sole purpose of buying insurance, allow rebates so agents will compete, assure that price information is available from an independent source, etc. If regulation is used, the process must be described, including access to proposed rates and other proposals for the public, intervention opportunities, etc.
    - Consumer bills of rights should be crafted for each line of insurance and consumers should have easily accessible information about their rights.
    - Regulators should focus on online monitoring and certification to protect against fraudulent companies.
    - A department or division within the regulatory body should be established for education and outreach to consumers, including providing:
        - Interactive websites to collect from and disseminate information to consumers, including information about complaints, complaint ratios and consumer rights with regard to policies and claims.

    - Access to information sources should be user friendly.
    - Counseling services to assist consumers, e.g., with health insurance purchases, claims, etc. where needed should be established.
- Consumers should have access to a national, publicly available database on complaints against companies/sellers, i.e., the NAIC database. (NAIC is implementing this.)
- To promote efficiency, centralized electronic filing and use of centralized filing data for information on rates for organizations making rate information available to consumers, e.g., help develop the information brokering business.
- Regulatory system should be subject to sunshine laws that require all regulatory actions to take place in public unless clearly warranted and specified criteria apply. Any insurer claim of trade secret status of data supplied to the regulatory entity must be subject to judicial review with the burden of proof on the insurer.
- Strong conflict of interest, code of ethics and anti-revolving door statutes are essential to protect the public.
- Election of insurance commissioners must be accompanied by a prohibition against industry financial support in such elections.
- Adequate and enforceable standards for training and education of sellers should be in place.
- The regulatory role should in no way, directly or indirectly, be delegated to the industry or its organizations.
- The guaranty fund system should be prefunded, national fund that protects policyholders against loss due to insolvency. It is recognized that a phase-in program is essential to implement this recommendation.
- Solvency regulation/investment rules should promote a safe and sound insurance system and protect policyholder funds, e.g., providing a rapid response to insolvency to protect against loss of assets/value.
- Laws and regulations should be up to date with and applicable to e-commerce.
- Antitrust laws should apply to the industry.
- A priority for insurance regulators should be to coordinate with other financial regulators to ensure consumer protection laws are in place and adequately enforced regardless of corporate structure or ownership of insurance entity. Insurance regulators should err on side of providing consumer protection even if regulatory jurisdiction is at issue. This should be stated mission/goal of recent changes brought about by GLB law.
    - Obtain information/complaints about insurance sellers from other agencies and include in databases.
- A national system of "Consumer Alerts" should be established by the regulators, e.g., companies directed to inform consumers of significant trends of abuse such as race-based rates or life insurance churning.
- Market conduct exams should have standards that ensure compliance with consumer protection laws and be responsive to consumer complaints; exam standards should include agent licensing, training and sales/replacement activity; companies should be held responsible for training agents and monitoring agents with ultimate review/authority with the regulator. Market conduct standards should be part of an accreditation process.
- The regulatory structure must ensure accountability to the public it serves. For example, if consumers in state X have been harmed by an entity that is regulated by state Y, consumers would not be able to hold their regulators/legislators accountable to their

needs and interests. To help ensure accountability, a national consumer advocate office with the ability to represent consumers before each insurance department is needed when national approaches to insurance regulation or "one-stop" approval processes are implemented.

- Insurance regulator should have standards in place to ensure mergers and acquisitions by insurance companies of other insurers or financial firms, or changes in the status of insurance companies (e.g., demutualization, non-profit to for-profit), meet the needs of consumers and communities.
- Penalties for violations must be updated to ensure they serve as incentives against violating consumer protections and should be indexed to inflation.

8. Consumers should be adequately represented in the regulatory process.

- Consumers should have representation before regulatory entities that is independent, external to regulatory structure and should be empowered to represent consumers before any administrative or legislative bodies. To the extent that there is national treatment of companies, a national partnership, or "one-stop" approval, there must be a national consumer advocate's office created to represent the consumers of all states before the national treatment state, the one-stop state or any other approving entity.
- Insurance departments should support public counsel or other external, independent consumer representation mechanisms before legislative, regulatory and NAIC bodies.
- Regulatory entities should have a well-established structure for ongoing dialogue with and meaningful input from consumers in the state, e.g., a consumer advisory committee. This is particularly true to ensure that the needs of certain populations in the state and the needs of changing technology are met.