NAMIC®

NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

Statement

of the

National Association of Mutual Insurance Companies

to the

United States

House Judiciary

Subcommittee on Regulatory Reform, Commercial and Antitrust Law

Hearing on

H.R. 372, the "Competitive Health Insurance Reform Act of 2017"

February 16, 2017

The National Association of Mutual Insurance Companies (NAMIC) is pleased to provide comments to the House Judiciary Subcommittee on Regulatory Reform, Commercial and Antitrust Law on H.R. 372, the "Competitive Health Insurance Reform Act of 2017."

NAMIC is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies representing 39 percent of the total market. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC member companies serve more than 170 million policyholders and write more than $230 billion in annual premiums. Our members account for 54 percent of homeowners, 43 percent of automobile, and 32 percent of the business insurance markets.

Introduction

The Competitive Health Insurance Reform Act of 2017 (H.R. 372) amends the McCarran-Ferguson Act to declare that nothing in that Act modifies, impairs, or supersedes the operation of antitrust laws with respect to the business of health insurance, including the business of dental insurance. Sponsors of the legislation assert that there is no basis supporting exemption of the health insurance industry from Federal antitrust and unfair competition laws. Representative Paul Gosar (R-AZ) in introducing the legislation has argued that elimination of the McCarran-Ferguson exemption for health insurers would increase competition and patient choice in health insurance. NAMIC strongly disagrees that the McCarran-Ferguson exemption is anti-competitive or harms insurance consumers.

McCarran-Ferguson Act

In response to the United States Supreme Court decision in *United States v. South-Eastern Underwriters Association*, 322 U.S. 533 (1944), that insurance was "interstate commerce" and subject to regulation by the federal government, Congress, in 1945, enacted the McCarran-Ferguson Act (15 USC 1011, et seq.). The McCarran-Ferguson Act provided for the continued regulation of insurance by the states and provided a narrow exemption from the general federal antitrust laws.[1] Specifically, the exemption

[1] The Sherman Act (prohibits restraint of trade and monopolistic practices), the Clayton Act (prohibits anti-competitive practices), the Robinson-Patman Act (an amendment to the Clayton Act prohibits price discrimination among customers who compete against each other), and the Federal Trade Commission Act (prohibits unfair methods of competition and deceptive practices).

is limited to activities that (1) constitute the "business of insurance," (2) are "regulated by State law," and (3) do not constitute "an agreement to boycott, coerce or intimidate or an act of boycott, coercion or intimidation." In addition, like other exemptions from antitrust laws, this exemption is to be construed narrowly.

The application of the McCarran-Ferguson limited federal antitrust exemption has worked well for decades to promote and maintain a healthy, vibrant, and competitive insurance marketplace in the United States. There are more than 7,500 insurers operating in the U.S., the majority of which are relatively small. These insurers span the range from large multi-state writers, to single county and niche writers, to surplus lines carriers. Studies over the years, including those done by the U.S. Department of Justice, state insurance departments and respected economists and academics, have consistently concluded that the insurance industry is very competitive under classic economic tests.

The competitiveness and diversity in the insurance market is reflected in NAMIC's membership in terms of size, geographic dispersion, lines of business and corporate structure. The McCarran-Ferguson exemption has contributed to this diversity and increasing the number and competence of insurers by making it easier for small and medium size insurers to compete. The existence of the exemption promotes competition in the insurance marketplace by allowing companies to exchange critical data regarding losses and other factors, facilitating participation and oversight of state guaranty funds, permitting state control over liquidations, and enabling the development and operation of assigned risk plans.

Over the years there have been numerous proposals to limit or repeal the McCarran-Ferguson limited antitrust exemption. Proponents often ground their calls for repeal or limitation on unproven assertions that the antitrust exemption has led to collusion within the industry; however, there has been no evidence to support these assertions. The industry is highly regulated by state insurance regulators who monitor not only safety and soundness issues, but also any potential anticompetitive and unfair trade practices.

Data Sharing and Standardization

In support of his legislation, Rep. Gosar contends that permitting data sharing between insurance companies leads to "artificially higher premiums, unfair insurance restrictions, and harmful policy exclusions." NAMIC believes that this assertion is based on a failure to understand the fundamental operation of the business of insurance. In fact, data sharing allows insurers to properly underwrite coverage, permits smaller insurers to compete and new insurers to break into the market and facilitates the operation of guaranty funds. Standardized risk classification and policy language make data more credible and enable consumers to better compare offers. Standardization affords

consumers greater opportunity to assess competing price and coverage options and reduces litigation over interpretation, streamlining the claims process.

Insurance is fundamentally different from other products, including other financial products, in that insurance is a promise of future financial obligations. As such, insurers lack complete information about the ultimate cost of the product at the time of the sale. Consequently, the policy premium is based on a best estimate of those costs. To develop these best estimates insurers rely on information from a large number of losses over a significant period of time. Few insurers, however, have enough information on their own to evaluate every type of risk they underwrite. These companies are not able to develop actuarially credible rating information through their internal loss experience alone. This is particularly important for smaller and medium sized companies. Without advisory loss cost data, they would be unable to compete with larger companies. In addition, many insurers rely on the availability of supplemental rating information developed by licensed advisory organizations to administer their rating programs. This information would not be available if all insurance companies did not report data or were constrained from reporting data as the result of antitrust exposure. Even if the data were available, the cost could be prohibitive if statistical agents had fewer companies over which to spread their production costs.

The state regulatory systems respect the value of advisory loss cost and similar data to competition by compelling insurers to report data and authorizing the compilation and publication of the data by licensed organizations. Regulators themselves also use such data to analyze trends and evaluate the appropriateness of rates and rating plans. It is the McCarran-Ferguson limited antitrust exemption that provides the legal framework under which the statistical agents collect and analyze the data and insurance companies pool and use the aggregated information.

Consolidated collection and analysis of data and publication of advisory loss costs improve the quality of the market by making it easier for smaller insurers to compete, and offer consumers greater choice. The availability and affordability of advisory loss cost data helps to maintain a blend of both large national firms and smaller regional and state level underwriters in the insurance market. In the absence of such data, smaller and medium sized insurers would confront increased operating expenses which over time could threaten their franchise and participation in the market. The absence of data or significantly increased expense of data would also have a chilling effect on the ability of some insurers to expand into new markets or new product lines, further reducing competition and consumer choice.

The limited antitrust exemption also facilitates efficient marketplaces by allowing insurers to form intercompany pools or syndicates to provide high-risk coverage and/or to allow small companies to participate in writing risks that would be unavailable on an

individual basis. In addition, the McCarran-Ferguson limited antitrust exemption is key to other cooperative functions such as joint underwriting associations and residual market mechanisms. The development and operation of assigned risk plans, such as those for auto and workers' compensation, with jointly determined rate schedules could be thwarted by limitation or repeal of McCarran-Ferguson. Similarly, participation in state guaranty funds, including monitoring the economic performance of competitors and distribution of losses, could be threatened. The insurance industry by necessity and design plays a hands-on role in administering state guaranty funds. Guaranty funds do not merely serve to replace funds, but to ensure swift and prudent payment of claims, including fraud prevention. These cooperative industry activities provide a critical safety net for insurance consumers and are essential to efficiently operating insurance markets, filling the gap for individuals and businesses otherwise unable to find coverage and ensuring prompt coverage in the event of insolvency.

Conclusion

The existence of the McCarran-Ferguson limited antitrust exemption serves to make the industry more competitive, not less. Proposals to repeal or limit the exemptions would threaten activities that have increased competition and provided significant benefits to America's consumers. It is highly likely that rather than increasing competition, repeal or limitation of the McCarran-Ferguson limited exemption would perversely reduce competition, increase insurance costs, reduce availability for some high-risk coverages and potentially disrupt insurance markets.

Congress should be wary of the unintended consequences of changes to the current limited antitrust exemption. Any change that precludes, restricts or even merely discourages the production and exchange of advisory loss costs and supplementary rating information could place smaller and regional firms at a distinct disadvantage, increase consumer costs, reduce consumer choice, and seriously undermine competition. There is no credible evidence that the cost, availability, or quality of insurance products would be enhanced if the McCarran-Ferguson limited antitrust exemptions were repealed or modified. Any change in the existing antitrust regime and repeal or modification to the current limitations could decrease market stability, reduce affordability and availability of products, stifle innovation and expansion, diminish industry efficiency and ultimately, inhibit rather than increase competition in the insurance marketplace.

As Congress confronts the difficult task of health care reform, NAMIC urges Congress to beware of efforts that could in fact make that job harder and harm, rather than help, the health insurance marketplace. Changes to the McCarran-Ferguson antitrust exemptions we believe fall into that category. The property/casualty insurance industry has significant interactions with the health care system and NAMIC looks forward to

working with Congress to improve its operation. We encourage the Committee and Congress to recognize and respect the critical role that the McCarran-Ferguson exemptions play in the efficient operation of our industry, which is vital to the economic health and vitality of our economy, and reject efforts to amend the current well-functioning antitrust regime.