ALLIANCE OF NONPROFITS FOR INSURANCE

Part of Nonprofits Insurance Alliance (NIA)

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

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

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

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

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

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

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

A. Liability Risk Retention Act of 1986

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

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

B. History of ANI's Service to Nonprofits

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

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

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

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

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

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

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

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

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

C. Why Insurance Companies are Reluctant to Insure Nonprofits

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. RRG Regulation

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

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

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

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

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

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

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

F. Nonprofit RRG Members Need Standalone Property Insurance

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

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

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

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

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

G. Other Proposed Solutions Inadequate

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

H. Third-Party Research Confirms This Market Failure

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

Date of Research: Spring 2015

Party Conducting Research: Independent insurance agents and brokers representing 2,000 nonprofit clients.

Nature of Research: Email survey of 47 insurance carriers.

Findings: Only 4 carriers indicated any interest in offering standalone property, but only for larger accounts, not in all states, and with significant restrictions on habitational exposures such as domestic violence shelters, group homes, homeless shelters, and drug and alcohol rehabilitation facilities. No insurer was interested in providing standalone auto physical damage insurance.

Date of Research: May 2017

Party Conducting Research: Guy Carpenter, a Marsh & McLennan Company

Nature of Research: Determine whether the American Association of Insurance Services (AAIS) has produced for use, by its more than 700 insurance company members, a standalone property form or standalone auto physical damage form of the type needed by small and mid-sized 501(c)(3) nonprofits.

Findings: AAIS confirmed that a search of their database revealed they have not produced such a form for either property or auto physical damage. They further advised they were not aware of any independent filings of this nature made by an admitted insurance carrier.

Date of Research: May 2017

Party Conducting Research: Guy Carpenter, a Marsh & McLennan Company

Nature of Research: Determine whether the Insurance Services Office (ISO) has produced a standalone property form or standalone auto physical damage form for use by commercial insurance companies of the type needed by small and mid-sized 501(c)(3) nonprofits.

Findings: ISO confirmed that a search of their database revealed they do not presently have such a form for either property or auto physical damage. They advised they had such a property form prior to 2002;

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

Date of Research: June 2017
Party Conducting Research: Perr&Knight is an independent, leading provider of insurance support services, including Actuarial Consulting, Competitive Intelligence, Data Services, Regulatory Compliance and Insurance Technology.
Nature of Research: Perform targeted research in the states of Florida and New York looking for admitted insurance companies having filed Business Owner's Policy (BOP) programs for organizations falling under IRS Section 501(c)(3) tax-exempt nonprofits which offer standalone property insurance as well as commercial auto coverage providing standalone auto physical damage coverage.
Findings: In New York and Florida, Perr&Knight found a filing made by North American Elite Insurance Company, part of the Swiss Re Group of Cos. offering a BOP policy for 501(c)(3) tax exempt nonprofits which offers standalone property insurance at the request of the Alliance of Nonprofits for Insurance, RRG (ANI). In addition, Perr&Knight found a New York filing by Mount Vernon Fire Insurance Company, part of Berkshire Hathaway, in which a BOP policy was designed for 501(c)(3) tax-exempt nonprofits. The Mount Vernon Fire Insurance Company filing **requires both property and general liability coverage to be purchased at the same time**. They found no filings for standalone auto physical damage coverage.

I. Consumer Protections Included in Nonprofit Property Protection Act

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

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

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

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

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

J. Benefits of the Nonprofit Property Protection Act

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

K. Conclusion

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

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

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

APPENDIX A

Risk Retention Groups: Frequently Asked Questions

1. **What publications are available to help understand RRGs and state's authority?**
   a. NAIC Risk Retention and Purchasing Group Handbook is available from the NAIC publications webpage at https://www.naic.org/documents/prod_serv_legal_ris_bb.pdf.
   The following key documents can be found as Appendices in the Handbook:
   - Appendix A: Federal Liability Risk Retention Act (LRRA)
   - Appendix B: NAIC Model Risk Retention Act (#705)
   - Appendix D: NAIC Uniform Risk Retention Group Registration Form

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

2. **How does the LRRA address regulation of RRGs?**
   a. Under §3902 of the LRRA, with the exception of the domiciliary state, RRGs are exempt from all state laws, rules, regulations, or orders that would make unlawful, or would regulate, directly or indirectly, the formation and operation of an RRG, except as provided in the LRRA. Only the domiciliary state may regulate the formation and operation of an RRG.
   b. The implementation of the LRRA was intended to allow organizations to come together in the creation of a risk-bearing, risk-sharing entity (the RRG) to offer its members, who are the beneficiaries of the insurance provided, liability coverage in an expedient and economical manner.

3. **How does RRG registration in a non-domiciliary state differ from the licensing process for a traditional insurer?**
   a. There are no solvency requirements imposed by the non-domiciliary state upon an RRG seeking to register in the State. Regulation as to formation and operation, including the imposition of solvency requirements, are imposed by the domestic state.
   b. RRGs are subject to a substantially similar application and licensing process imposed by the domestic state, or state of domicile. For registration to conduct business in non-domestic states, RRGs are not subject to the standard application and licensing process (NAIC UCAA Instructions or NAIC Company Licensing Handbook).
   c. The registration process is intended to be simpler than the licensing process for other types of insurers. Registration is focused on information gathering rather than decision making. Registration is not the same as admission or company licensing; it is not intended to provide non- domiciliary states with any regulatory powers over RRGs other than that provided in the LRRA. It is not within a state's authority to use the processing of a registration to bar RRGs seeking to lawfully operate in a state, nor can a state declare a "moratorium" on the filing of

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

d. The LRRA references two documents that must be provided to the non-domestic state – a plan of operation OR a feasibility study. There is also additional information such as contact information of the RRG, chartering state information, and the lines of liability insurance business that are written by the RRG seeking to register. All this information is provided in the completed NAIC Uniform Risk Retention Group Registration Form.

e. For an RRG that is compliant with the LRRA and the regulation of their domestic state (including authorization to register to do business in another state), the non-domestic state cannot deny the RRG's registration. If there is uncertainty, the domestic state should be contacted.

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

a. Review the NAIC Uniform Risk Retention Group Registration Form and verify the RRG has provided a complete form.

b. Once a complete form is received, the RRG is authorized to write in the state where it registers. The following best practices may also be considered during the registration process; however, they do not impact the registration status of the RRG:

    a. Review the information provided with the registration form for reasonableness.
    b. Reach out to the domestic state insurance regulator for additional information or concerns. The best practices Inquiry Template can be used and modified as appropriate.
    c. Notify the RRG once the registration form is deemed complete. They are now registered in the state.

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

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

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

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

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7. **Can an RRG registration be delayed if a financial statement filing and/or audit is not yet available at the time of application or registration?**
    a. No, an RRG can register prior to filing of an annual financial statement audit and a statement of opinion on loss and loss adjustment expense reserves with its domiciliary state.
    b. Once these initial filings are made, they are available on I-Site for review.
    c. If questions arise due to lack of this information, the non-domiciliary state should reach out to the domestic state to address its concerns.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Best Practices – Risk Retention Groups

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

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

Questions/Concerns from Non-domiciliary State

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

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

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

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

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

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

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

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Registration Timeline

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

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

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

Domiciliary State Responsibilities

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

General Licensing Guidance

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

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

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

Attachment A – Inquiry Template

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

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

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