



Financial Security...for Life.

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President & Chief Executive Officer

May 2, 2017

The Honorable Jeb Hensarling
Chairman
House Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Hensarling:

I am writing to express the views of the American Council of Life Insurers regarding H.R. 10, the Financial CHOICE Act of 2017. Thank you for introducing this important legislation and for your leadership to develop public policies that strengthen markets and promote economic growth. The Financial CHOICE Act would reduce unnecessary regulation of the life insurance industry and support U.S. competitiveness.

The American Council of Life Insurers (ACLI) is a Washington, D.C.-based trade association with approximately 290 member companies operating in the United States and abroad. ACLI advocates in state, federal, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers' products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing 94 percent of industry assets, 93 percent of life insurance premiums, and 97 percent of annuity considerations in the United States.

ACLI strongly supports the provisions in the Financial CHOICE Act that repeal the non-bank designation authority of the Financial Stability Oversight Council (FSOC). Elimination of the non-bank designation authority for life insurance companies is an essential reform that will refocus systemic oversight on macroprudential risks and avoid the problematic impacts of arbitrary and misdirected FSOC designations. By rebalancing the FSOC approach, H.R. 10 will lead to better outcomes for insurance regulators, insurance markets, and insurance consumers.

The current FSOC process for systemic designations of non-banks is fatally flawed. Life insurance companies that have gone through the designation process have not received adequate information or explanation of FSOC analysis and decisions. Documents provided by FSOC to insurance companies provide little insight into the basis for designation decisions. These documents typically offer only conclusory statements, unrealistic predictions, and speculations that are unsupported by factual and economic analysis. FSOC has not provided companies with enough information that would allow them to take positive steps to avoid designation, or be de-designated through appropriate action.

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A significant issue with the FSOC process has been the extremely inconsistent use of its broad authorities as applied to different sectors of the financial services industry. This problem is best illustrated by the very different approaches taken toward the insurance industry, which has been subject to designation of individual firms, as compared to the asset management industry. In the case of asset managers, FSOC has focused on recommendations for new or heightened standards for specific practices that may pose significant risk rather than singling out firms for designation.

Another significant problem with the FSOC process for non-bank systemic designations of insurers has been its failure to appropriately consider the role of existing primary financial regulators leading to a lack of understanding and recognition of the strong insurance regulatory framework in place through the state-based system. The state-based insurance regime has a long and successful track record of insurance regulation.

Insurance companies have experienced prudential regulators that have greatly increased the tools available to oversee and effectively regulate the industry. In the last decade, state insurance holding company laws and group supervision practices have been strengthened and expanded to enable state regulators to be vigilant in identifying and aggressive in addressing issues of concern that might jeopardize the corporation as a whole. For example, insurance companies or groups are now required to submit an own risk and solvency assessment (ORSA) to state insurance regulators who routinely review them with the group's management in cooperation with other regulators. Prudential oversight of insurance companies through the state-based system continues to be demonstrably strong and effective as it evolves to meet ongoing challenges.

One of the explicit statutory requirements the FSOC must consider is the "degree to which the company is already regulated by one or more primary financial regulatory agencies." Contrary to this statutory requirement, the FSOC has not appropriately considered in its designation of insurers the authority and tools available under the state-based insurance regime, including numerous and substantial reforms policymakers have implemented since the financial crisis.

The lack of consideration given to primary financial regulators of insurance has been exacerbated by the lack of insurance expertise and representation on the panel. Of the 10 FSOC voting members, at least seven are primarily banking industry regulators. When either the FSOC Independent Member with Insurance Expertise or the nonvoting state insurance regulator offered dissenting views, they were disregarded and overruled. FSOC also dismissed concerns registered by the then primary insurance regulator in New York state, Benjamin Lawsky, Superintendent of the New York Department of Financial Services, in a letter to Treasury Secretary Jacob Lew in July of 2014.

Clearly, the designations of insurers were largely dependent on banking expertise, not insurance expertise. FSOC's decisions with regard to insurers were bank-centric and not grounded in an accurate understanding of the business of insurance. Life insurers are fundamentally different from banks. FSOC's reliance on an inappropriate and unrealistic bank-like "run" scenario on insurance products as the trigger of an insurer's financial distress or cause of systemic risk illustrates its bank-centric mindset for considering insurance firm designations.

H.R. 10 appropriately refocuses FSOC's role so that it is positioned to identify macro-prudential risks. FSOC's narrow focus on a few individual entities in certain sectors has diverted attention and resources away from its more important role as a broad-sighted macro-prudential overseer of the economy that can identify potential systemic risk in a timely fashion. The enormous resources and time devoted by FSOC to duplicative oversight of a few individual insurance companies has significantly depleted the attention that could be focused on insufficiently regulated or unregulated sectors of the financial economy, where the next crisis is much more likely to arise.¹

ACLI would urge the Committee to consider increasing FSOC's insurance regulatory expertise by adding state insurance regulators as voting members. FSOC's actions to date reflect its dominance by bank regulators, discounting the opinions of the single insurance expert voting member, resulting in erroneous and harmful decisions affecting insurance companies. This structural change must also ensure that any FSOC recommendations that would affect insurers must be developed with direct input of state insurance regulators, and that any implementation of such recommendations is solely within the province and authority of those regulators.

With regard to international insurance standards, H.R. 10 reflects many of the principles of transparency, accountability, and due process that are supported by ACLI and its member companies. ACLI supports increased Congressional oversight over international standard setting initiatives for insurance at the International Association of Insurance Supervisors (IAIS) and the Financial Stability Board (FSB), including the definition of Internationally Active Insurance Groups (IAIGs). Due to the importance of the work being done in international forums, more engagement with Congress and stakeholders is necessary. U.S. engagement by the Federal Reserve Board, state insurance regulators, and Treasury Department is essential to influencing the international process and ensuring that international standards reflect the unique strengths of the U.S. system for prudential insurance regulation.

With regard to the changes proposed in Title XI, ACLI would be interested in further dialogue with the Committee. ACLI believes that the functions of FIO should be refocused with an emphasis on its existing role in coordinating federal efforts on prudential aspects of international insurance matters in coordination with state regulators and the NAIC, including but not limited to participation at the IAIS. Some adjustment to FIO's domestic portfolio may be appropriate, but it should remain an advisory arm to the federal government on insurance-related issues. Consideration should be given as to whether these functions should continue to be carried out by the Federal Insurance Office or elsewhere within Treasury, or under another existing agency.

¹ For emphasis, the Committee may wish to consider stating within the CHOICE Act that the purpose of these provisions is to both permanently remove designation authority and rescind any existing non-bank designations in place at the time of enactment.

Similarly, the office of the FSOC Independent Member with Insurance Expertise has been an important resource, source of expertise, and thought leader on insurance supervision. The Independent Member, the only voting insurance expert on FSOC, made key observations about insurance products and supervision in his dissents from FSOC designations of insurance companies. ACLI has supported an increased consultation and advisory role for this office in legislation previously approved by the Committee, such as attending meetings of the Financial Stability Board, The Group of Twenty, and the Organization for Economic Cooperation and Development. ACLI supports inclusion of those provisions in the CHOICE Act. ACLI believes that the additional participation by and consultation with the Independent Member would positively impact U.S. influence in international organizations. As with public policy relating to FIO, ACLI believes that public policy should continue to support the essential role of the Independent Member.

ACLI supports inclusion of the Senior Safe Act in sections 491-493, but urges the Committee to modify the language so that certain agents and advisers working with seniors are not excluded from the bill. The Senior Safe Act facilitates better communication among life insurance companies, insurance producers, and regulatory agencies in the event of suspected financial exploitation of senior citizens. By encouraging the reporting of suspected fraud, the Senior Safe Act improves the ability of regulators to protect seniors from losing their retirement savings.

ACLI thanks you for your strong leadership on the Department of Labor's flawed rulemaking on fiduciary standards and for your continued focus on this issue in H.R. 10. ACLI looks forward to continuing to work with you to ensure that families have access to the best possible retirement advice and products.

By repealing FSOC non-bank designation authority, and addressing other key policy issues, the insurance provisions of H.R. 10 reflect many of the principles supported by ACLI. We look forward to working with you as the Financial CHOICE Act moves through the legislative process. Thank you for your leadership and for your consideration of our views.

Sincerely,



GOVERNOR DIRK KEMPTHORNE