



December 16, 2011

Michael McRaith  
Director  
Federal Insurance Office  
Department of Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, DC 20220

Re: Public Input on the Report to Congress on How to Modernize and Improve the System of Insurance Regulation in the United States

Dear Director McRaith:

The American Association of Independent Claims Professionals (AAICP)<sup>1</sup> appreciates the opportunity to provide input regarding the Federal Insurance Office's (FIO) report to Congress on how to modernize and improve the system of insurance regulation in the United States.<sup>2</sup>

AAICP is the only association that represents the interests of independent claims adjusting companies nationwide. Collectively, AAICP member firms employ tens of thousands of employees in all 50 states. AAICP members play a crucial role during times of loss by providing independent claim valuation, timely claim resolution, and a wide range of recovery services. AAICP member representatives are typically among the "first responders" to insurable individual, community and business emergencies throughout the United States. AAICP member companies respond to general disasters such as hurricanes, forest fires, flooding, and acts of terrorism. They also assist individuals and businesses with recovery from property losses, liability disputes, and work-related injuries and disabilities. As such, AAICP is in a unique position to provide its perspective regarding the lack of national uniformity of state insurance regulation and the need for consistent national standards to minimize current regulatory

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<sup>1</sup> The American Association of Independent Claims Professionals (AAICP) was formed in 2002 and is a national Association representing the interests of independent claims professionals. AAICP members employ thousands of claim specialists and other professionals across the country and handle millions of workers' compensation, disability, property and liability claims annually. AAICP members include Asurion, Cunningham Lindsey, Custard Insurance Adjusters, Gallagher Bassett Services, Sedgwick Claims Management Services, and Specialty Risk Services. For more information, see <http://www.aaicp.net>.

<sup>2</sup> Public Input on the Report to Congress on How to Modernize and Improve the System of Insurance Regulation in the United States, 76 Fed. Reg. 64,174 (Oct. 17, 2011).

arbitrage. This harmonization has taken place in other segments of the insurance industry, such as the National Association of Registered Agents and Brokers licensing reciprocity provisions for insurance producer regulation included in the Gramm-Leach-Bliley Act. Claims adjusters should benefit from similar advancements and not forced to jump through hoops due to a lack of incentive for state insurance regulators to coordinate their regulatory regimes.

As the FIO examines and formulates recommendations for the U.S. insurance regulation system, AAICP would like to comment on (1) the degree of national uniformity of state insurance regulation, including the regulatory licensing process, and (2) the ability of any potential Federal regulation to eliminate or minimize regulatory arbitrage.

### **Executive Summary**

Because independent claims adjusters often work across state lines and respond to natural disasters or individual accidents, it is important that they be able to meet customer needs in a timely and efficient manner. Unfortunately, independent claim adjusters are often governed by onerous state laws with outdated restrictions regarding registration and licensing requirements.

For this reason, AAICP recommends the implementation of a national standard for state regulation that advances global uniformity, reciprocity, and consumer protections for claims adjusting across state lines. Further, AAICP suggests that states be required to adopt uniform educational, training, and ethical criteria, for the proper licensing of independent claims adjusters through a multi-state exam that tests such criteria. Finally, AAICP believes that states should enable disaster victims to receive expedited, quality service, by automatically authorizing adjusters who are properly licensed in their home state, to adjust disaster-related claims in a Presidentially-declared disaster area.

### **Federal Regulation Should Encourage States to Adopt Uniform Standards for Claims Adjusters**

The FIO requested comments on the degree of national uniformity of state insurance regulation and asked commenters to identify “excessive, duplicative or outdated insurance regulation or regulatory licensing process.”<sup>3</sup> Further, the FIO requested comments regarding the ability of any potential Federal regulation or Federal regulators to eliminate or minimize regulatory arbitrage.<sup>4</sup> In response, AAICP’s comments focus on the current problems resulting from conflicting state regulations of independent claims adjusters, and the need for uniform national standards to govern the state-based regulation of claims adjusters.

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<sup>3</sup> *Id.* at 64,175.

<sup>4</sup> *Id.*

*State Laws Governing Interstate Claims Adjusters are Outdated and Excessively Burdensome*

Independent claims adjusters serve an important role in assisting individuals to obtain the fairest and speediest resolution to their claims on insured losses suffered because of an accident or natural disaster. Independent claims adjusters use their specialized training and experience to help return victims' lives to normal through claims assessments and payments. Moreover, they facilitate such payments by obtaining statements from witnesses and victims, identifying and preserving pertinent physical testimonial evidence, and discussing settlement terms for the claims.

However, the important service that independent claims adjusters provide is often frustrated by excessive and outdated state laws. For example, several states limit an adjuster's ability to operate across state lines by imposing residency and in-state office requirements, or refusing to recognize licensing reciprocity.

Other states, such as Connecticut, Louisiana, New Hampshire, and North Carolina have not adopted the National Association of Insurance Commissioners (NAIC) uniform application form or may not accept online applications. These state practices unreasonably delay an adjuster's ability to operate within the state and promptly assist individuals in need.

Independent claim adjusters are also subject to arbitrary and unreasonable state licensing requirements. Instead of permitting standard reciprocity, some states require out-of-state adjusters to provide copies of their original test scores regardless of when their license was obtained, while other states require out-of-state adjusters to provide "certificates of character" signed by five reputable citizens of the community in which such applicant resides or transacts business, each of whom shall certify that he has personally known the person or individual for a period of at least five years.

Additionally, some states have requirements in place for out-of-state adjusters that are redundant or impede the assignment of claims. For example, Adjuster #1 in Illinois may assign a Florida claim to be handled by Adjuster #2 in Florida. Adjuster #2 is properly licensed in Florida, but Adjuster #1 is not. Some then argue that, by talking over the phone to Adjuster #2 in Florida, Adjuster #1 still "handled" the Florida claim, even though the claim had been assigned to an adjuster with the proper Florida credentials.

The problems regarding state regulation are exacerbated in disaster situations, where victims need to have their claims adjusted rapidly. To date, some states have not posted their emergency adjuster forms online. Additionally, some states require case-by-case state approval before non-resident adjusters can operate within the state. Similarly, in states where out-of-state adjusters are granted temporarily licenses, it is often unclear whether the temporary licenses are valid for a set number of days or until the disaster designation has been lifted for an area.

*Federal Regulation Promoting Uniformity Across State Lines Would Eliminate Regulatory Arbitrage*

As detailed above, the current state regulation and licensing process for claims adjusters is excessive, duplicative, and outdated. For this reason, while AAICP believes that state-based regulation of claims adjusters should be maintained, it recommends uniform national standards that will truly enable claims adjusters to assess and settle claims across state lines. Particularly, as the FIO develops its Report to Congress, AAICP urges it to consider the need for Congress or the FIO to impose uniform state regulatory and reciprocity standards for claims adjusters or to coordinate adoption at the state level of uniform national standards.

Uniform regulatory and reciprocity standards would not only allow claims adjusters to more efficiently and effectively operate in various states, but they would also tremendously benefit consumers, who deserve fair and speedy resolution for their claims. Moreover, such uniform standards would ease the current burdens on state regulatory agencies, who often have limited financial and human resources.

To develop uniform regulatory and reciprocity standards, AAICP recommends Congress empower the NAIC and the states to work together in developing specific uniform educational, training, and ethical criteria to determine the proper licensing of claims adjusters. AAICP also proposes that the NAIC develop a multi-state exam to test those criteria, facilitating standard reciprocity. Finally, AAICP believes that Congress, with the support of the FIO, should implement laws requiring states to automatically authorize adjusters to adjust disaster-related claims in a Presidentially-declared disaster area, enabling disaster victims to receive expedited and quality service.

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We thank the Federal Insurance Office for the opportunity to provide input on how to modernize the U.S. system of insurance regulation. If you have any questions, please do not hesitate to contact David Farber at 202-457-6516 or [dfarber@pattonboggs.com](mailto:dfarber@pattonboggs.com).

Sincerely,



David Farber  
Counsel to AAICP