



April 2023

Oppose Risk Retention Group Expansion

- *The NAIC opposes the 2022 draft bill to amend the Liability Risk Retention Act of 1986 (LRRRA) that would allow Risk Retention Groups (RRGs) to write commercial property insurance for non-profits.*
- *The LRRRA's federal preemption limits oversight of RRGs, which increases the risk of insolvency and puts state-run guaranty funds at risk. This exposes nonprofit organizations and their beneficiaries to unnecessary risks.*
- *Unlike the conditions that led to the LRRRA, there is no evidence of a crisis in commercial property insurance for nonprofits or any other sector that warrants preempting state laws designed to safeguard policyholders, however, we are examining the market to determine if more attention in this space is warranted.*

Background

In the 1980s, liability insurance availability was severely limited. Premiums for general liability more than tripled over a three-year period. To address this issue, Congress passed the LRRRA as a narrow exception to state insurance regulations. The LRRRA allowed RRGs to write commercial liability insurance and limited state insurance regulatory authority. RRGs were given different regulatory and financial solvency requirements to quickly address the lack of commercial liability coverage.

RRGs are almost exclusively regulated by a single domiciliary state regulator, with limited non-domiciliary state regulation, even though they may operate in other states. In comparison, traditional admitted insurers must receive a license and comply with regulations in every state they write business. As a result, RRG policyholders in non-domiciliary states lack full regulatory protection and RRGs lack the robust oversight offered by multiple regulators.

Unlike the circumstances that lead to the LRRRA, there is currently no evidence of a widespread availability crisis in the commercial property insurance market. Nonprofits can obtain coverage through traditional admitted carriers – although some offer full businessowner policies containing both liability and property coverages – and if options are limited, nonprofits have access to the surplus lines and residual markets.

Further, the proposed legislation would let RRGs participate in state guaranty funds, which pay claims to policyholders if an insurer fails. RRGs have had more insolvencies than admitted insurers and letting them participate in the fund without full regulation would increase risk for the fund, other insurers, and policyholders. Recent natural catastrophes highlight the need for strong solvency oversight of insurers writing such coverage.

Key Points

- ✓ Congress should defer legislation until the NAIC, using its state regulatory authority, can collect data on nonprofits' ability to obtain commercial property coverage.
- ✓ In response to the concerns raised by certain members of Congress and market participants, the NAIC Property and Casualty Insurance Committee has adopted a priority objective in 2023 to “[s]tudy and report on the availability and affordability of liability and property coverage for non-profit organizations.”