



Consumer Federation of America

Testimony of J. Robert Hunter

Director of Insurance, Consumer Federation of America

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“Examining the Availability of Insurance for Nonprofits.”

Chairman Clay, Ranking Member Stivers and Members of the Subcommittee, thank you for the opportunity to present testimony before you today. I am Bob Hunter, Director of Insurance for Consumer Federation of America (CFA). CFA is an association of more than 250 national, state, and local non-profit consumer organizations that was founded in 1968 to advance the consumer interest through advocacy, research and education. Prior to my work with CFA, I was the Texas Insurance Commissioner, and I was the Federal Insurance Administrator during both the Ford and Carter administrations. In my federal role I was a member of the Interagency Task Force that proposed the first Risk Retention Group in 1977, which directly led to the Product Liability Risk Retention Act of 1981. I also founded and served as President of the National Insurance Consumer Organization, or NICO, between 1980 and 1993.

In 2002, Consumer Federation of America called on Congress to expand the Liability Risk Retention Act to cover all commercial property/casualty insurance to address the high cost of commercial insurance and availability concerns during the hard market of the early 2000s and, especially in the wake of 9-11.

Today, I am here to support a much narrower expansion than we supported in 2002. H.R. 4523, the "Nonprofit Property Protection Act" would require those states with insurance markets that cannot address the insurance needs of nonprofit organizations to authorize only very experienced and stable RRGs to provide additional coverage beyond the liability-only coverage authorized under the current Risk Retention Act.

Before I discuss why the limited Risk Retention Group (RRG) expansion in H.R. 4523 is a safe, consumer-protective approach to addressing a serious market problem, I would like to share my thoughts on the role of RRGs generally and the reason I have been supportive of this alternative risk sharing mechanism for more than 40 years.

In the mid-1970s, America faced the first of three liability insurance crises in which liability insurance had extreme price increases and shortages of coverage availability. The other crises were in the mid-1980s and the early 2000s. President Ford created an Interagency Task Force

in 1975 to look into the cause of and solutions to the situation. The Task Force continued this research and made its recommendations under President Carter. I served on this Task Force under both Presidents as the Department of Housing and Urban Development's (HUD's) representative (the Federal Insurance Administration, which I headed at the time, was then situated at HUD).

Through closed claim studies, the Task Force determined that the 1970s crisis was caused by the economic cycle of the insurers, not by an influx of claims as the insurers had alleged.

We also proposed two solutions to the then current problem as a preemptive response to future crises when the insurer economic cycle moved into periodic hard markets:

1. Since data were not broken out for the most troubled lines, we worked with the National Association of Insurance Commissioners to require more precise data in insurer annual statements going forward, particularly for medical malpractice and products liability insurance. This was very helpful in understanding the later hard markets.
2. We suggested the product liability line was not competitive and needed greater coverage availability. We proposed the creation of alternatives to the normal insurance market and specifically proposed the creation of Product Liability Risk Retention Groups. A bill to achieve that, the Product Liability Risk Retention Act, was introduced in 1979. This bill was ultimately enacted into law in 1981.

The 1981 act limited RRGs and risk purchasing groups to insurance covering only product liability and completed operations liability. RRGs had to be chartered, and thus regulated, as an insurer in one of the United States or U.S. jurisdictions (in the original Act, charters were also allowed in Bermuda or the Cayman Islands). The act specifically exempted RRGs from most regulation by any state in which they operated, except from the chartering state. This federal exemption, however, did not pre-empt laws that were not specific to the business of insurance, such as fraud or deceptive practice laws.

In the mid-1980s there was a second liability insurance crisis, again caused by the insurer economic cycle. This hard market period caused even more serious shortages of coverage and price jumps in the traditional insurance market. As President of the National Insurance Consumer Organization (NICO) at the time, I was very involved in explaining the insurance market economics causing the crisis and testified about that phenomenon in Congress several times and, over the course of 1986, in all 50 states of the Union.

This mid-1980s crisis led Congress, in 1986, to expand the 1981 Act to include most types of commercial liability insurance and expanded the organizations that could form such groups to include any business (as well as state or local governments or governmental entities) as long as all the members of a single group were engaged in similar business activities or were exposed to similar risks. This expansion did not extend to the small number of foreign-based risk retention groups. These foreign groups, formed under the 1981 Act's authority described above, were allowed to continue in the area of product liability insurance but were not

permitted to expand into other kinds of commercial liability insurance. The 1986 Act also allowed some increased oversight of risk retention and purchasing groups, including the requirement to file documentation in non-chartering states, and the right of non-chartering commissioners to conduct examinations if the chartering state failed to do so and to seek injunctions against groups in a hazardous financial situation. In general, however, the intent of Congress was still to allow these groups to operate throughout the country while being regulated largely by a single state regulator.

That single-state-regulator approach notwithstanding, it is worth noting that the construction of the federal law is such that while RRGs have certain exemptions from state laws, this is not a blanket exemption.

Even, for example, if an RRG is domiciled in Vermont,

- when serving nonprofits in Ohio, it will be subject to Ohio's law concerning Good Faith and Fair Dealing;
- when serving nonprofits in New York, it will be subject to that state's Civil Code §349 on deceptive acts and practices;
- in Arkansas, Florida, and California, the Vermont-domiciled RRG is subject to the Arkansas Civil Rights Act of 1993, the Florida Civil Rights Act, and California's Unruh Civil Rights Act;
- in Texas, Illinois, and New Jersey, the RRG is subject to the respective fraud laws in each state; and
- to generalize the point, each state applies its own consumer protection laws to RRGs including those state laws involved in unfair claims practices and fraudulent practices irrespective of where the RRG is domiciled.

So, while we needed to construct a unique regulatory system to support this unique risk management mechanism, the law ensures that many significant state consumer protections still apply.

RRGs that cover the liability insurance needs of nonprofit groups have served the nonprofit sector well over the past 30 years and with an attention to sector-specific (and often unusual) needs that the private insurance market has not been able to provide. Historically, nonprofits that also have property insurance needs have gone to the private commercial market for that coverage, which they maintain in conjunction with their RRG's liability coverage. However, there is evidence that there is not a competitive market among private commercial insurance carriers offering stand-alone property coverages to small- and medium-sized nonprofits that get their liability coverage through an RRG. That is, insurance providers will only sell property insurance bundled with liability coverage, yet, as I noted previously, the private liability insurance market does not adequately cover the unique needs of nonprofit organizations and is often not a workable option for these important non-profit entities.

Indeed, CFA's own member organizations have expressed both a difficulty being able to afford the commercial insurance coverage they need and difficulty finding insurance that provides coverage appropriately tailored to the unique activities of their organizations. As one of our state member consumer advocacy organizations explained, every time they have sought quotes from a private insurer for liability coverage, they have been told they could only get a policy that excluded any activity involving legislative advocacy, which is, obviously, problematic for a consumer advocacy organization. For reasons like this, thousands of small and medium-sized nonprofits around the country rely on the Risk Retention Act for their insurance. But if they cannot use that right to an RRG, because they cannot get property insurance, then the Act will no longer function as intended.

A 2017 study by the firm Guy Carpenter, a subsidiary of the industry giant Marsh and McLennan, captures this problem in stunning detail. According to Guy Carpenter's research, as follows:

Despite extensive research over several months, other than those filings made by Swiss Re on behalf of the Alliance Member Services Program, we were not successful locating standalone auto physical damage or standalone property coverage filings that could be used to provide appropriate monoline coverage for 501(c)(3) nonprofits wishing to purchase a property or auto physical damage policy without simultaneously purchasing liability coverage. The few filings applicable to small and mid-sized nonprofit organizations, required the simultaneous purchase of property and liability insurance.

Based on my experience and expertise, I believe that expansion of the Act proposed under H.R. 4523 is needed to enable non-profit entities to access difficult to obtain property insurance to complement their extant RRG liability coverages. This narrow expansion is consistent with the original intent of Congress to ease difficult markets where normal insurance competition is weak and threatened. As we have heard from non-profit entities, the only provider of stand-alone property coverage to wrap around the RRG liability coverage is threatening to leave the market. One market participant is insufficient to be workably competitive even should that carrier decide to stay in this business. The current spate of catastrophes has weakened the property insurance market in many parts of the country as well.

If you, like me, believe that nonprofit organizations have unique enough liability exposure that needs the specialized offerings authorized under the 1986 Liability Risk Retention Act, then this Guy Carpenter report makes it plain that we have to allow RRGs to complement their liability policies with property coverage, or nonprofits with property and auto exposure will not be able to get the protection they need.

This situation, if left unaddressed, will force nonprofits to choose between having appropriate liability coverage but no access to property coverage or having property coverage but no access to sufficient and appropriately tailored liability coverage.

There is no reason to force this dilemma onto nonprofit organizations – these are groups that assist homeless veterans, provide programs for children with autism, advocate for consumer protections, and provide many other services to poor and marginalized populations. This high risk group of service providers are also unique in the fact that significant numbers of the providers of these services are volunteers. By expanding the authority of RRGs to provide the property coverage that nonprofits also often need, we can avoid an insurance availability crisis for the organizations that serve our country on a nonprofit basis.

Because the structure of state oversight of RRGs is different than traditional insurance companies, we believe that there is an important federal role in establishing standards that will ensure the nonprofit members of RRGs are safe from unnecessary risk related to the RRGs solvency.

H.R. 4523 provides three strong standards to ensure that risk retention property coverage could only be offered under certain conditions. Those are:

1. It can only be offered in a state in which the State Department of Insurance cannot identify at least three companies that actually sell standalone property and auto physical damage policies to nonprofits;
2. The RRGs authorized to sell the expanded coverage have to meet key tests in terms of capital, surplus, and levels of exposure to risk; and
3. No RRG can sell the additional coverage to nonprofits unless and until it has been engaged in the business for at least 10 consecutive years.

The first standard, in which state departments of insurance can bar this expansion simply by demonstrating that there is not a problem in the state should put to rest the argument that this bill is not needed because there is no problem. The legislation contemplates the possibility that, in some states, there is no problem, and it allows a commissioner to step in and block any expansion if that is the case.

The third standard I noted, which requires an RRG to have been operating for 10 years prior to selling the expanded coverage should put to rest another argument I have heard, in which some claim that expansion may leave nonprofits subject to unstable or unsafe carriers. I am providing with my testimony a 2019 Report prepared by the trade journal *Risk Retention Reporter* with data that show that no Risk Retention Group that serves nonprofits *and* has operated for at least 10 years has ever become insolvent. Now, to be clear, property coverage is different than liability coverage, so I am not comparing the zero insolvencies for the RRGs impacted by this law to the many insolvencies we see in the traditional insurance market, but, based on the data, there is no way to suggest that allowing stable RRGs that only serve nonprofits to add property and auto physical damage coverages will put nonprofits at greater risk than if Congress does nothing.

I would note that CFA would be supportive of including all RRGs, or even just nonprofit-serving RRGs, in state guaranty funds as a further protection for the nonprofit policyholders who rely on risk retention groups to ensure their ability to serve their communities.

I am happy to answer any questions you have.

Analysis of Risk Retention Group Insolvencies: A Risk Retention Reporter Special Report

Since the passage of the Liability Risk Retention Act in 1987 there have been 505 risk retention group formations. Over that same time frame there have 46 RRG insolvencies, including National Warranty Insurance Risk Retention Group an insurer formed under the 1981 Product Liability Act, for an overall insolvency rate of 8.7%.

Trends in risk retention group insolvencies vary greatly by business sector and years of operation. For example, RRGs serving the Transportation sector have an insolvency rate of 22.9%, while groups serving the Professional Services sector have an insolvency rate of 3.8%.

Risk Retention Group Insolvency Rate by Business Sector

BUSINESS SECTOR	# OF INSOLVENCIES	TOTAL RRG FORMATIONS	BUSINESS SECTOR INSOLVENCY RATE
Environmental	1	20	5.0%
Financial	1	7	14.3%
Government & Institutions	1	22	4.5%
Healthcare	14	264	5.3%
Leisure	1	8	12.5%
Manufacturing & Commerce	6	41	14.6%
Professional Services	1	26	3.8%
Property Development	3	47	6.4%
Transportation	16	70	22.9%
Total	44	505	8.7%

The first ten years of operation see a much higher rate of insolvency, with the largest number of risk retention group insolvencies occurring between four and seven years of activity. Only nine risk retention groups have gone insolvent after ten years of operation, giving those RRGs an insolvency rate of 1.8%.

Only one risk retention group has gone insolvent after more than 15 years of activity, the aforementioned National Warranty Insurance Risk Retention Group. As a group formed grandfathered in under the LRRRA, National Warranty differed from groups formed after 1987 in that it was domiciled in the Cayman Islands.

Risk Retention Group Insolvency Rate by Age

YEARS ACTIVE	COUNT OF INSOLVENT RRGs
1 to 5	18
5 to 10	19
10 to 15	8
15+	1

Appendix: Risk Retention Group Insolvencies by Years Active

RRG NAME	COVERAGE AND MEMBERSHIP	YEARS ACTIVE
National Warranty Ins. RRG	Automobile Service Contracts	22.76
Fairway Physicians Ins. Co.,A RRG	Medical Malpractice for Physicians	13.97
Oceanus Ins. Co.,A RRG	Medical Malpractice for Physicians	12.96
Elite Transportation RRG	Commercial Truckers	12.96
Doctors Insurance Reciprocal (RRG)	Medical Malpractice for Physicians	12.92
Lancet Indemnity RRG, Inc.	Professional liability for physicians	11.98
First Keystone RRG, Inc.	Commercial Taxis and Commercial Vehicles	11.04
Pinelands Ins. Co. RRG, Inc.	Commercial Taxis	10.76
American National Lawyers Ins. Reciprocal (RRG)	Legal Malpractice for Attorneys	10.25
Jamestown Ins. Co.,A RRG	Propane Distributors	9.90
Indemnity Insurance Corporation, RRG	Insurance for Nightclubs, Concerts, Special Events	9.58
National Dental Mutual Ins. Co., a RRG	Malpractice for Dentists	9.25
Doctors & Surgeons National RRG IC, Inc.	Medical Malpractice for Physicians	9.13
United Contractors Ins. Co., Inc.,A RRG	General liability for contractors and builders	8.96
Lewis & Clark LTC RRG	General and professional liability for long-term care facilities	8.89
Ocean RRG, Inc.	Commercial auto liability for taxicab operators	8.45
HOW Insurance Co.,A RRG	Home Owner Warranties for home builders and remodelers	7.75
PrimeGuard Ins. Co., Inc.,A RRG	Contractual liability for automotive service contracts	7.68
Nonprofits` Mutual RRG, Inc.	Various liability lines for 501(c)(3) nonprofits	7.26
The Reciprocal Alliance (RRG)	General and professional liability for healthcare systems	7.25
Beverage Retailers Ins. Co. RRG	Liquor liability for retailers licensed to purvey spirits,	7.09
Liberty First RRG Insurance Co.	Commercial auto and cargo liability for truckers	7.05
Professional Mutual Insurance Co. RRG	Professional liability for osteopaths, M.D.`s and dentists	7.01
Spirit Commercial Auto RRG, Inc.	Commercial auto liability for truckers	6.90
Scaffold Industry Insurance Co. RRG, Inc.	General and excess liability for scaffolding distributors	6.23
Capital Assurance RRG, Inc.	Contractual liability for automotive service contracts	6.17
No.American Physicians Ins. RRG (NAPI)	Professional liability for physicians	5.92
Transurance RRG, Inc.	Commercial auto liability for truckers	5.25
Transportation Liability Ins. Co.,A RRG	Commercial auto and general liability for truckers	4.84
NSA RRG, Inc.	General liability for grocery stores	4.84
Physicians` National RRG, Inc.	Medical malpractice for health care providers	4.59
Astraea RRG, Inc.	General and auto liability for truckers	4.50
Federal Motor Carriers RRG, Inc.	Commercial auto liability for truckers	4.34
U.S. Physicians Mutual RRG	Medical Malpractice for Physicians	4.25
Financial Advisors Assurance Select RRG	Professional liability for financial professionals	4.09
Charter RRG Ins. Co.	Commercial auto liability for car rental and limousine co.	3.92
CareConcepts Insurance, Inc.,A RRG	General and professional liability for long-term care facilities	3.50
United Physicians RRG	Medical Malpractice for Physicians	3.17
Petroleum Marketers Mutual Ins. Co., a RRG	Unknown coverages for petroleum companies	2.92

RRG NAME	COVERAGE AND MEMBERSHIP	YEARS ACTIVE
Rent Rite Advantage Services, Inc. a RRG..	Unknown coverages and membership	2.42
National Auto Mutual Insurance Co.,A RRG	Auto liability for commercial vehicles	2.25
Carrier Solutions RRG, Inc.	Contractual liability for trucking companies benefits	2.00
Cabina-America Insurance,A RRG, Inc.	Commercial auto liability for taxi owners	1.84
National Transportation RRG, Inc.	Auto liability for taxis and limousines	1.08
Commercial Truckers RRG Captive Insurance Co.	Commercial auto liability for truckers	0.92
Transportation American Group, Inc.,An Ins. RRG	Commercial auto liability for taxi owners	0.67