



March 31, 2009

The Honorable Timothy F. Geithner
Secretary of Treasury
U.S. Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220
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Dear Secretary Geithner:

During the March 26, 2009 House Financial Services Committee hearing, in response to questioning from Rep. Paul Kanjorski, you offered this dangerous statement:

I think there is a good case for introducing an optional federal charter for insurance companies.

This "optional federal charter" is on the wish list of big property-casualty insurance companies who have pined for the opportunity to escape strong state insurance regulations. The proposal would allow insurance companies to *choose their regulator simply by changing their charters*, and evade state regulatory oversight.

Your support for this optional scheme was especially astonishing given your own opening statement at the same hearing. You declared we must "end the practice of allowing banks and other finance companies to choose their regulators simply by changing their charters."

If banks shouldn't pick their regulator, why should insurance companies?

Policyholders have been protected throughout the current financial crisis because insurers regulated by the states were not free to take the perilous risks condoned by weak federal rules and listless federal overseers. That is why the optional charter is opposed by the National Association of Insurance Commissioners and the nation's consumer groups.

Does the Administration seek a departure from the system of state-based regulation of insurance rates, premiums, underwriting and claims practices and solvency requirements? Your statement appears to favor allowing the biggest insurers to simply opt out of state oversight they find too onerous.

As pioneers of the voter-imposed system of strict insurance regulation in California, we know that big insurers were thrilled to hear your statement. Rep. Kanjorski noted its importance and went on national news that evening calling your comments on

federalizing insurance a "big victory."¹ But with tens of billions of policyholder dollars saved as a result of insurance laws in California, and considering that no policyholder in the nation has lost a dime (or seen a claim go unpaid) during this economic crisis, consumers should be terrified by the prospect of an "optional federal charter."

In Consumer Watchdog's home state of California, consumers will be especially hard-hit. Over the last twenty years, Proposition 103, the ballot initiative approved by California voters in 1988, has protected consumers from insurance company rate gouging, illegal surcharges and other abusive practices.

An April 2008 state-by-state study of auto insurance regulation by the Consumer Federation of America found that California drivers have saved \$62 billion since Proposition 103's passage. The Federation named California one of the most competitive and profitable markets in the country, yet with the slowest-growing automobile insurance premiums in the nation. All of these gains could be lost for consumers if insurers are able to opt out of strong state regulation for a lower federal standard, or if federal standards preempt state oversight entirely.

While we do not know how successful any financial system overhaul will be in the long run, we do know that the system of state-based insurance regulation neither created the meltdown nor allowed any American motorist, homeowner or business owner with insurance policies (or a single claimant) to face any harm in the wake of the meltdown. And, further, we are certain that in order to watch out for regulatory gaps with potentially systemic impact, there is no need (other, perhaps, than as a political gesture to big insurers and their advocates on Capitol Hill) to allow any insurer to be free of any existing state consumer protection.

You implied as much in response to the first question at the hearing, in which Rep. Scott asked:

But here we come with the insurance companies, and insurance companies are already regulated by the states. So is there a conflict? How are you going to handle that conflict in dealing with the insurance companies, particularly in view of the fact that it's not been insurance that has caused the problem?

You said:

[W]e have an enormously complicated system in the United States with regulation at the federal and state level, multiple bank supervisors, multiple authorities, and it just didn't work. It did not deliver what it has to deliver. And I think that we have to start by making sure we have in place effective, consolidated supervision over those entities that could pose potential risk to the system.

Now, that does not mean that we should supplant and take away the existing authorities that state insurance companies -- state insurance supervisors have

¹ Representative Kanjorski said: "And, incidentally, the secretary today indicated for insurance companies that he's in favor of going to federal regulation of insurance companies, and that's a big victory..." on PBS News Hour with Jim Lehrer, March 26, 2009

over those institutions or that the bank regulators have over depositories. So what we're suggesting, I think, is fully compatible with maintaining their important role in supervising insurance companies.

The "optional federal charter" proposal, however, is exactly a supplanting of authority that will not only take oversight powers away from the state commissioners and supervisors, but will lead to a rapid decline in protections across the board.

Under the optional charter approach, the industry, wielding its considerable lobbying clout, will pit state policymakers and regulators against federal overseers, creating a race to the regulatory bottom. In your opening statement last Thursday, you made this very point when you said:

We can't allow institutions to cherry-pick among competing regulators and shift risk to where it faces the lowest standards and weakest constraints.

In addition to the cherry-picking that will lead to lower standards and weaker regulation if an optional system is created, strong state consumer protection laws will, one by one, be thrown into federal courts and administrative hearings for conflicting with lesser federal rules. Smaller companies will challenge their obligation to abide by state laws that larger companies deemed systemically risky avoid by virtue of federalization. In short, financial system regulatory reform would prove to be the most significant federal effort to deregulate the insurance industry since the "FTC Improvements Act of 1980" prohibited the FTC from investigating insurance company practices. However, this plan's impact would be exponentially worse.

We know that it has been a very difficult few weeks, with so many issues and as many ideas forcing their way onto the front burner. We hope, through all of this, that insurance deregulation is not the policy of the Administration and would like to meet with you and your staff members working on insurance issues as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Heller". The signature is stylized with a large, sweeping initial "D" and a long, horizontal flourish extending to the right.

Douglas Heller