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STATEMENT BEFORE THE U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON  
FINANCIAL SERVICES, SUBCOMMITTEE ON HOUSING, COMMUNITY  
DEVELOPMENT AND INSURANCE, FOR A  
HEARING ON INSURING AGAINST A PANDEMIC:  
CHALLENGES AND SOLUTIONS FOR POLICYHOLDERS AND INSURERS

November 19, 2020

Founded in 1931, the National Association of Professional Insurance Agents (PIA National) is a national trade association that represents independent insurance agencies and their employees. PIA members sell and service all kinds of insurance but specialize in coverage of automobiles, homes, and businesses. PIA National represents independent insurance agents in all 50 states, Puerto Rico, and the District of Columbia.

Independent insurance agencies play a particularly important role in delivering insurance products to commercial businesses, large and small, throughout the U.S. Since March, the spread of the COVID-19 virus has wreaked havoc on ordinary life and devastated businesses. During this difficult time, independent agents have stepped up, as they always do during a crisis, to offer as much help as they can to their clients.

PIA National supports policy proposals that will help its members and the whole small business community maintain liquidity and, ultimately, solvency during these tumultuous economic times. Throughout this time, we have urged Congress to pass more relief for small businesses, and we will continue to do so, including by funding, reforming, and resuming the Paycheck Protection Program (PPP). At the same time, we recognize the need to be proactive in preparing for the possible economic consequences of a future pandemic.

PIA National's Guiding Principles for Future Pandemic Proposals

- **Public-Private Partnership:** PIA National envisions a federal government backstop in the form of a public-private partnership as the optimal method of providing business interruption (BI) coverage for pandemics. We support the Pandemic Risk Insurance Act (PRIA), and we are open to improvements that will maximize its benefits for both industry and policyholders.
- **Affordability for Small Businesses:** A legislative solution must be affordable for small businesses.

- **Utilization of Existing Insurance Framework:** PIA members prefer to work within the framework of the insurance industry. We are concerned about proposals that would require insurance agents to deliver a non-insurance product to consumers.
- **Focused on the Future:** Proposals should be future-focused, allowing businesses to properly budget for it and make considered, informed decisions about their participation. We strongly oppose any proposal that would retroactively rewrite existing BI provisions.

## **Public-Private Partnership**

PIA National believes that a public-private partnership is essential to ensuring that a future pandemic does not again result in economic disaster, particularly for small businesses. The insurance industry did not cause this economic upheaval, but the insurance community can be part of the solution. In the past, similar steps have been taken to create markets for flood and terrorism risk insurance and, while it would be challenging, the insurance community can do it again for pandemics using a public-private partnership.

Without a federal government backstop, it is not clear that insurers would—or could—provide BI coverage for losses resulting from pandemics. But with this backstop, losses that arise out of future pandemics could be insurable. A program like PRIA could be temporary, just until a private market develops for BI products that include viruses. The creation of a private market for a new group of products strengthens the entire industry. PIA National’s long-term objective is for the private industry to build and deliver BI products that cover pandemics, and we encourage our industry partners to embrace that long-term goal as their own.

A pandemic is unpredictable in both frequency and severity. Carriers may be understandably reluctant to offer coverage in circumstances where they are unable to gauge the potential financial impact on industry surplus. However, carriers are in the best position to assist in the claims process after a loss occurs, and the presence of a government backstop should provide sufficient financial scaffolding to allow risk-averse carriers to offer BI coverage that includes pandemics. A public-private partnership like the one contemplated by the PRIA proposal will provide the insurance industry with the certainty it needs to safely underwrite this unique risk.

PIA National supports a public-private partnership that utilizes the existing insurance framework and provides businesses with a realistic option for protecting themselves from the economic consequences of a potential future pandemic.

## **Pandemic Risk Insurance Act**

PIA National supports H.R. 7011, the Pandemic Risk Insurance Act (PRIA), which was introduced earlier this year by Rep. Carolyn Maloney (D-NY). This legislation includes many of the elements PIA National views as essential for any public-private partnership.

The PRIA bill, which, as we understand it, would not apply retroactively to COVID-19-related losses, would begin on January 1, when most insurance plans renew, and would cultivate a market for pandemic insurance. The PRIA bill would permit insurers to voluntarily opt into a

program whereby any BI provision offered by the participating carrier would include pandemic coverage. In exchange, the federal government would cover 95% of losses incurred by a covered event (where “covered event” is defined as an outbreak of infectious disease or pandemic, identified as a public health emergency, according to the Secretary of Health and Human Services).

The Treasury Department would pay 95% of aggregate covered losses once those losses reach \$250 million. The government coverage would be capped at \$750 billion in losses per year. The program would be voluntary, but insurers that offer BI coverage would be required to include the risk of pandemics if they chose to participate. Insurers that chose not to participate would retain the option of keeping a pandemic exclusion in any BI coverage they offered.

### **Affordability for Small Businesses**

Any proposed solution must be affordable for small businesses. Policymakers should offer businesses of all sizes a way to avoid the economic crisis a future pandemic could cause. According to the Insurance Information Institute (III), as of earlier this year, only about one-third of all small businesses had BI coverage at all.

Many of the policy proposals that include pandemic BI coverage could inadvertently increase the cost for all kinds of BI coverage for small businesses. A PRIA-like program that increases the cost of BI coverage without offering any offsetting savings will inevitably price out small businesses and thus further lower the percentage of businesses that have it overall.

Other proposals that have been released by industry stakeholders may hold the key to the affordability issue. Whether it is amending the current PRIA text to include a mandatory-offer provision applicable to small businesses (who would need to affirmatively opt out) or the use of risk pools, we can come together to ensure that small businesses will be able to afford a program created to address future pandemics.

### **Utilization of Existing Insurance Framework**

PIA’s members prefer to work within the framework of the insurance industry. Any proposal should utilize the existing insurance framework, as have the solutions to other so-called “uninsurable” risks, which once included terrorism and even flood insurance. Proposals that would require insurance agents to deliver a non-insurance product to consumers undermine the power of the agent salesforce. Independent agents represent the needs of their policyholders to insurers, explaining the intricacies of policy features and limitations and acting as an intermediary between consumers and carriers. When agents are forced to sell non-insurance products, it compromises their credibility and can diminish their relationships with their clients.

One such proposal appears to be modeled off the National Flood Insurance Program (NFIP) and its NFIP Direct program; it would rely entirely on the federal government for its administration. Apparently, independent insurance agents would be the main delivery force for this program. The federal government would pay for most of the losses in the categories the proposal covers.

This approach assumes the federal government will have a permanent role in insuring pandemics. On the other hand, a public-private partnership that utilizes the existing insurance framework could, over time, cultivate the development of a private market that operates independently of the federal government.

### **Focused on the Future**

Any proposal should be focused on the future so that businesses can plan it within their budgets and make an informed decision about participating. We strongly oppose any proposal that would retroactively rewrite existing BI provisions.

The business community requires assistance to survive the COVID-19 pandemic and thrive in its aftermath. One typical source of such assistance is BI coverage, which allows businesses to file insurance claims for (typically physical) losses resulting from interruptions to their ordinary course of business. BI coverage is routinely available after a business is forced to close because of physical damage sustained in a hurricane or tornado, for example. However, most BI provisions include exclusions for losses caused by intangible conditions like viruses or gas leaks.

One troubling suggestion has been proposed in several state legislatures and the U.S. Congress: requiring insurers to retroactively recognize financial losses triggered by the coronavirus outbreak as part of their policyholders' BI coverage, even where such coverage would otherwise be contractually excluded. Broadly speaking, these proposals would seek to expand BI insurance provisions to cover losses associated with the closures and shelter-in-place orders arising from COVID-19, even though the policies including such provisions were not written, sold, or purchased with that understanding by anyone involved. Such a proposal would essentially override the common exclusion for losses due to viruses like COVID-19, and it would eliminate (often statutory) requirements that losses be a direct result of damage to or loss of physical property.

Insurance policies are priced and sold based on the likelihood of the policyholder experiencing a covered loss, the risk of which is calculated by actuaries and underwriters. Moreover, commercial insurance policies are contracts entered into by businesspeople with extensive background knowledge and experience on both sides. State or federal legislatures do not have the power to rewrite private contracts. The unanticipated long-term consequences of such proposals would harm everyone involved. Even in the immediate future, it would create additional financial instability and uncertainty, exacerbating the existing economic struggles plaguing businesses and the American people.

Most importantly, retroactive BI would leave many small businesses behind, because, as noted above, only about one-third of American small businesses have business interruption coverage. As such, using retroactive BI to solve this problem would not help even half the small businesses currently struggling because of COVID-19. Pursuing retroactive BI will artificially create winners and losers within the small business community.

Any policy prescription intended to protect businesses from the economic consequences of a future pandemic should be focused on the future. Importantly, this approach will also allow businessowners to choose to participate in a future pandemic proposal.

## **Conclusion**

PIA National believes a public-private partnership is the best way to protect businesses from the negative impact of a future pandemic. The PRIA legislation introduced by Rep. Maloney should serve as a template for action on this issue. We support building upon the PRIA bill by incorporating thoughtful provisions from other proposals, particularly those that would facilitate the affordability and thus the participation of small businesses.

We are hesitant to embrace a non-insurance product that relies on independent insurance agents, who prefer to work within the framework of insurance. PIA National and its members look forward to continuing to work with policymakers on this important issue.