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NRRA CHALLENGES GAO REPORT ON RISK RETENTION GROUPS

Washington, D. C. -- The National Risk Retention Association (NRRA) has challenged the findings of the Government Accountability Office (GAO) in its recent report on implementation of the Liability Risk Retention Act of 1986 (LRRRA).

In a letter to Alicia Puente Cackley, Director of the GAO's Financial Markets and Community Investment Division, Joseph Deems, NRRA Executive Director, called upon GAO to rectify errors in the original GAO document.

"The primary problem created by the report is that its findings will be and already are being cited by regulators as reliable evidence of ambiguities in the LRRRA, ambiguities which in fact do not exist. It is imperative that you undertake action to clarify these issues so that your report will not serve to perpetuate the same problems that served as the bases of our complaints to begin with," Deems wrote.

He also took issue with the GAO on the following points:

1. "The GAO report incorrectly states that the 'LRRRA does not provide for a specific process for RRGs to register to conduct business in non-domiciliary states.' In fact, the LRRRA is quite clear that the registration requirements in a non-domiciliary state are limited to submitting the documents enumerated under 15 U.S.C. § 3902 (a) (1).
2. "Your finding that the LRRRA is 'silent' on fees is again contradicted by the plain language of the LRRRA, which specifically provides that among those exempted from preemption are those allowing the recovery of premium and other taxes. Ergo, the only type of taxes permitted are premium taxes."

"The underlying cause of this potentially very dangerous problem to the industry was your reliance upon the NAIC as a proper entity for input in this process," Deems wrote. He pointed out that the NAIC is an organization of state insurance commissioners but has no regulatory authority. NRRA as the association that represents RRGs should be given equal right to comment on the GAO report. Deems called upon GAO either to remove the NAIC comments or publish an appendix containing NRRA comments.

Risk Retention Groups are authorized under federal law (LRRRA) to operate nationally with only limited regulation by states where they are not licensed. The GAO was charged by Congress with examining the extent to which non-domicile states were exceeding their authority. NRRA commended GAO for calling on Congress to "clarify" the registration requirement, fee and coverage provisions of the LRRRA but complained that the GAO did

not take a strong position in support of RRGs where certain states have imposed requirements that clearly are in direct conflict with the federal law.

“Currently, the only way for RRGs to assert their rights is through lengthy, costly litigation. Federal courts have ruled in favor of RRGs in seminal cases, but without an enforcement mechanism in the law there is no efficient, timely way for RRGs to assert their rights,” Deems said in earlier comments on the GAO’s failure to reinforce the basic provisions of the LRRRA.

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