

WSIA Regulatory Principles



Adopted May 1, 2020

WSIA believes the below principles are necessary to maintaining an effective and efficient regulatory environment for the wholesale, specialty and surplus lines insurance industry to operate within in order to provide consumers with appropriate insurance solutions.

I. Freedom from Regulation of Surplus Lines Rates and Forms

Freedom from regulation of rates and forms distinguishes the surplus lines market from the admitted market and is the essential element that enables the surplus lines industry to serve the consumer and function as a market for hard to place risks. It should be defended at all times in all states, even for seemingly minor infringements.

II. Deference to Terms Negotiated in Insurance Contracts

Insurance policies should not be retroactively mandated to cover claims that were not originally anticipated as a term of the contract. Legislative and regulatory activity mandating insurance policy interpretation to include specific coverage, regardless of clear wording of the policy, violates well-established constitutional and legal precedent. Any attempt to require insurers to pay for coverage that was never sold or to cover claims never intended when the policy was underwritten and priced, must be firmly opposed.

III. Primacy of Surplus Lines

State based residual market mechanisms should not be given risk placement preference before surplus lines. The sequence of risk placement should be as follows: admitted market > surplus lines market > state based residual market.

IV. The Principle of Export

The principle of export means that surplus lines transactions involve state regulated surplus lines brokers, exporting business to nonadmitted companies not licensed by the state. This principle forms the regulatory framework of the surplus lines market and defines the role of the surplus lines broker in the transaction as the regulated entity. It separates the company from direct, 50 state regulation – including rates and forms and establishes context of the taxation of the transaction.

V. Uniform and Reciprocal Licensing of Surplus Lines Brokers Between the States

A uniform and reciprocal 50 state licensing system for surplus lines brokers is essential to effectively operate within the wholesale, specialty and surplus lines insurance industry. Implementation of the National Association of Registered Agents and Brokers (NARAB) is critical to achieve a 50-state system.

VI. Nonadmitted and Reinsurance Reform Act of 2010 (NRRA)

The Nonadmitted and Reinsurance Reform Act of 2010 (NRRA) provided a foundation for an effective national system based on the home state approach, leading to a modern regulatory framework and improved uniformity. The intent and clear mandates of the NRRA and the resulting uniformity and efficiencies in the regulation of multistate surplus lines transactions must be preserved. Any changes to the original law, at either the state or federal level, that may jeopardize the significant improvements, efficiencies, and uniformity, must be opposed.

VII. State Regulation

WSIA is committed to maintaining the state-based system of insurance regulation because it is the most favorable system for the wholesale, specialty and surplus lines market. The surplus lines marketplace is an essential part of

the national insurance market and operates best in the state-based regulatory system. However, WSIA believes the current state-based system must implement additional uniformity in order to continue to effectively operate in a state-based system. Uniformity among and reciprocity between the states in areas of producer licensing and taxation is critical. The implementation of national standards would improve the efficiency and effectiveness of the state regulatory system; however, no standard, state or federal, should be enacted that curtails, hinders or otherwise prevents the surplus lines market from performing its vital role as a safety-valve and supplemental market for insurance consumers.

VIII. Export Lists and Commercial Lines Deregulation – Automatic Export

State export lists provide states effective and efficient means to regulate the flow of surplus lines business in and out of the state based on the known underwriting appetite of the standard market. All states with diligent effort requirements should utilize Export Lists. In states where transactions involving commercial policyholders have implemented commercial lines deregulation and/or NRRR exempt commercial purchaser laws, risk should automatically qualify for export to the surplus lines market without conducting a diligent search.

IX. Elimination of Carrier/Broker Reconciliation

The NRRR directs the taxation of all surplus lines premium to the home state of the insured where the full amount of tax paid can be directly and effectively audited by the state. States should rely on broker filings, with brokers remitting 100% of the tax to the home state on 100% of the premium for the home state of the insured. Additional auditing and comparisons of broker and carrier information is unnecessary and does not yield appropriate comparisons for purposes of accurate audit results.

X. Federal Regulation

WSIA does not believe that a federal based system of regulation can be effective in the oversight of an industry established to address a state-based system of compensations. Proponents of Optional Federal Charter (OFC) believe that regulation of rates and forms will be eliminated by securing such charters. A system of OFCs would be an unproven regulatory system and wouldn't provide the best regulatory structure for the wholesale, specialty and surplus lines market and distribution system. If OFCs were to be implemented, it would be essential that the regulatory structure permit a holding company to simultaneously hold federal and state charters so that the insurance could be placed under the regulatory system that offers rates, terms and conditions most consistent with the policyholder's needs. WSIA is supportive of the role of the Federal Insurance Office (FIO) in studying and overseeing the efficiency and modernization of the system of insurance regulation in the United States; however, we believe any federal policy regarding insurance regulation must continue a course aimed at strengthening state insurance regulation and coordinating the efforts of federal agencies with state regulatory systems. FIO's federal subpoena authority as it relates to insurance data should be eliminated because federal entities should secure such data through the appropriate state insurance regulator.

XI. Guaranty Fund

Surplus lines guaranty funds are unnecessary for the following reasons:

- They promote false security because the coverage is typically inadequate for commercial lines;
- They promote the use of financially weak companies;
- Potential premium assessments are an unfair burden on surplus lines consumers; and
- The surplus lines marketplace is financially secure and dominated by companies with ratings that average significantly higher than the overall market.