



**The Surety & Fidelity
Association of America**
Serving the Industry Since 1908

**McCarran-Ferguson Fosters a Financially Sound
and Highly Competitive Insurance Industry**

Congress is Considering Repeal of McCarran Ferguson

The insurance industry has a limited immunity from the federal antitrust law under the McCarran Ferguson Act of 1945 (McCarran). The purpose of McCarran is two-fold: 1) it returns to the states the authority to regulate the business of insurance and 2) it grants the business of insurance limited immunity from the federal antitrust laws to the extent that it is regulated by the states. In no event are any activities that constitute boycotts, coercion or intimidation shielded from antitrust enforcement. McCarran covers only collective insurance industry activities that are regulated by the states. It allows for sharing of data through advisory organizations to help all insurers assess risks but does not allow individual insurers to fix prices or otherwise restrain competition in the industry. Congress is considering legislation that repeals the McCarran limited immunity and allows federal agencies to regulate the business of insurance.

Repeal of McCarran Hurts Consumers and Small Businesses

McCarran allows for limited sharing of data in the insurance industry to help all insurers measure risk and price insurance products. This is particularly important for surety and fidelity insurance, which represents only 2% of the total property-casualty insurance market in the United States. Even the largest surety company likely would not have actuarially sound data on its own.

Without aggregate industry loss data, each insurer could inadvertently either over price or under price its product. Consumers do not benefit from being overcharged or buying insurance from an insurer with financial problems due to under pricing. McCarran has promoted a remarkably competitive insurance market with thousands of companies writing insurance with relatively little insolvency. Changing that is a bad idea.

If access to aggregated industry data was not protected, each individual company would have to bear the expense of compiling that data on its own. The costs would be prohibitive for many small- to medium-sized insurance companies that lack the resources to undertake these functions individually, and they would be particularly hard hit. Without the services of advisory organizations, small companies would not be able to compete with the large insurers as they do now in most markets. There would be fewer insurers in the market. Fewer insurers translates into less competition, and less competition translates into fewer choices for consumers and higher prices. Collective access to the services of advisory organizations helps small insurers stay in business. There are over 500 companies writing surety bonds in the United States. Many of these are small and regional companies without sufficient data to adequately price these bonds without reference to trade association aggregate data. These sureties provide bonds at a fair price to contractors who might not be of interest to other larger sureties. Changing that is a bad idea.

In the decades since McCarran was enacted, clear boundaries of permissible and illegal activities have been established for insurers, advisory organizations and the state insurance regulators that oversee them with an extensive array of state laws and regulations, as well as lengthy litigation. If McCarran is repealed, the industry will face protracted litigation regarding its collective activities under the federal antitrust laws. It will result in legal and regulatory confusion, which adds costs to the system that consumers will bear. The certainty of the current legal and regulatory structure promotes competition in the industry. Why change that?

McCarran Promotes Healthy Competition in the Insurance Industry

Insurance is a unique product. While most products can be priced when they are sold based on factors such as the cost of production and distribution, the true cost of insurance is unknown at the time of sale. It is a promise now to pay for losses that occur later. In order to price their products, insurers need aggregate loss data from the industry. To accurately predict the cost of future losses and price the insurance product accurately when it is sold, insurance actuaries combine historical loss data into statistically credible pooled databases, using generally accepted and tested actuarial techniques such as loss cost development and trending. Collective loss cost aggregation provides all insurers with much-needed statistical credibility in how to price its products. This allows more insurers to enter the market and to compete with large insurers. All of this protects consumers and enhances their insurance choices.

The combination of McCarran and state insurance regulation allows insurers to exchange critical data regarding losses, engage in data analysis and develop standardized policy forms through state licensed advisory organization such as The Surety & Fidelity Association of America (SFAA) and the Insurance Services Office (ISO). These organizations provide the complex, costly and time-consuming tasks of providing loss cost information and standard policy forms that few insurers would have the ability to undertake on their own. Each insurer benefits from the economies of scale in these services from advisory organizations, keeping the prices lower, and each insurer adds its own experience to the data and other services to set its own prices and coverage.

Standardized policy forms allow consumers to know that they are comparing similar insurance coverage when shopping for insurance. They may be quoted different prices and offered different services, but the coverage is standardized so that they have a common base to evaluate different insurers.

Advisory organizations are subject to state insurance regulation and most state insurance codes contain a list of permitted and prohibited activities for advisory organizations. State insurance departments examine advisory organizations for their compliance with state laws and regulations and for the quality and accuracy of the data that they report to state insurance departments.

Much of the effort to repeal McCarran is based on the belief that it allows individual insurers to collude on prices and policy coverage. It is illegal for insurers to act outside of the scope of the licensed and regulated advisory organizations or to restrain competition in any way. Rather than increasing competition, repeal of McCarran would likely decrease the number of insurers competing in the marketplace, increase insurance costs and reduce the availability of many insurance coverages including surety and fidelity bonds.