

1           **DRAFT Resolution Opposing Regulation Intruding on the States’**  
2           **Traditional Role as the Primary Regulator of Homeowners’ Insurance**

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4           *Summary*

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6           This Resolution upholds the McCarran-Ferguson Act and reserves the primacy of  
7           homeowners’ insurance regulation to the states by opposing the listing of the provision  
8           and pricing of homeowners’ insurance by the U.S. Department of Housing and Urban  
9           Development as an example of a housing policy that may have a disparate impact on a  
10          specific group of persons.

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12          *Model Resolution*

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14          **WHEREAS**, the United States Department of Housing and Urban Development  
15          published notice of a proposed rule in the Federal Register on November 16, 2011, titled  
16          “Implementation of the Fair Housing Act’s Discriminatory Effects Standard”; and

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18          **WHEREAS**, the purpose of the proposal is to establish a uniform standard of liability for  
19          facially neutral housing practices that have a discriminatory effect; and

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21          **WHEREAS**, the proposed regulation would add language to existing Fair Housing Act  
22          regulations confirming such Act may be violated by a housing practice that has a  
23          discriminatory effect regardless of whether the practice was adopted for a discriminatory  
24          purpose; and

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26          **WHEREAS**, under the proposed rule a discriminatory effect is deemed to occur where a  
27          facially neutral housing practice actually or predictably results in a discriminatory effect  
28          on a group of persons (i.e., causes a disparate impact); and

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30          **WHEREAS**, the proposed rule lists the provision and pricing of homeowners’ insurance  
31          as an example of a housing policy or practice that may have a disparate impact on a class  
32          of persons protected by the Fair Housing Act; and

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34          **WHEREAS**, Congress specifically reserved the primacy of homeowners insurance  
35          regulation to the States with passage of the McCarran-Ferguson Act; and

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37          **WHEREAS**, federal and state courts consistently reject challenges to homeowners  
38          insurance pricing practices on the basis of disparate impact in order to preserve state  
39          regulation of insurance underwriting and rating practices in accordance with the  
40          McCarran-Ferguson Act; and

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42          **WHEREAS**, the proposed regulation could erode existing state laws that  
43          comprehensively regulate the provision and pricing of homeowner’s insurance; and  
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45 **WHEREAS**, the erosion of the authority of the States to regulate insurance could harm  
46 consumers and the insurance marketplace by creating uncertainty and by inciting costly  
47 and unnecessary litigation,  
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49 **THEREFORE, BE IT RESOLVED** that American Legislative Exchange Council  
50 (ALEC) supports the legislative intent of Congress as expressed in the McCarran-  
51 Ferguson Act to reserve the primacy of regulation of homeowners insurance to the States  
52 and expressly disclaim from the purview of the proposed rule any impact on the  
53 underwriting, rating or availability of homeowners insurance; and  
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55 **BE IT FURTHER RESOLVED** that ALEC supports the current authority of the States  
56 to regulate insurance under the McCarran Ferguson Act.



COMMON CAUSE  
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