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

Summary

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

Model Resolution

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

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

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

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

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

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

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

WHEREAS, the proposed regulation could erode existing state laws that comprehensively regulate the provision and pricing of homeowner’s insurance; and
WHEREAS, the erosion of the authority of the States to regulate insurance could harm consumers and the insurance marketplace by creating uncertainty and by inciting costly and unnecessary litigation,

THEREFORE, BE IT RESOLVED that American Legislative Exchange Council (ALEC) supports the legislative intent of Congress as expressed in the McCarran-Ferguson Act to reserve the primacy of regulation of homeowners insurance to the States and expressly disclaim from the purview of the proposed rule any impact on the underwriting, rating or availability of homeowners insurance; and

BE IT FURTHER RESOLVED that ALEC supports the current authority of the States to regulate insurance under the McCarran Ferguson Act.