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NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

# Protect the State-Based System of Insurance Regulation

*Congress must act to prevent federal agencies from duplicating the work of state insurance regulators and eroding the strength of the state based regulatory system.*

**NAMIC asks you to support necessary Federal Insurance Office (FIO) legislative reforms to foster healthy and competitive state-based insurance markets.**

- For 170 years, Americans have benefited from a strong, competitive insurance market supported by the state-based regulatory system with 12,000 regulators, which oversee nearly 3,000 licensed property/casualty insurers.
- The system's strength lies in its consumer-focused approach: state regulators understand their states, communities, laws, and markets and are directly accountable to their constituents.
- FIO was created with specific guardrails to prevent federal intrusion into insurance regulation; it was intended only to serve as an informational resource and a voice on international policy alongside state regulators.
- Despite lacking regulatory authority or the ability to preempt state laws, FIO has repeatedly undermined and encroached on state regulators' responsibilities over the past 16 years.
- Most recently, FIO pursued an ideologically driven climate-change report while ignoring the spirit of the law requiring coordination with state regulators on data collection. FIO demanded data directly from insurers—ignoring public objections from state regulators and demonstrating abuse of its limited subpoena authority. While FIO eventually backed down, the resulting report predictably failed to improve our understanding of climate change or address insurance affordability and availability.
- This is one of several examples showing that FIO is, at best, unnecessary and, at worst, harmful to the industry and consumers.
- Statutory reform is needed to curb FIO's overreach and duplication of regulatory work. NAMIC supports two reform bills:
    - **Insurance Data Protection Act (H.R. 3437/S. 1544)**: Removes FIO's subpoena power to prevent it from acting like a regulator; reintroduced by Rep. Scott Fitzgerald and Sen. Katie Britt.
    - **McCarran-Ferguson Restoration Act (H.R. 7130)**: Reorganizes FIO by replacing it with a U.S. Insurance Representative focused narrowly on international prudential matters; introduced by Rep. Troy Downing.

**To ensure insurance markets remain healthy, competitive, and grounded in effective state-based regulation, NAMIC urges you to support the McCarran-Ferguson Restoration Act (H.R. 7130) to replace FIO and the Insurance Data Protection Act (H.R. 3437/S. 1544) to remove FIO's subpoena authority and prevent further intrusion into state regulatory responsibilities.**

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## Protect the State-Based System of Insurance Regulation (FIO Reform)

## ***TALKING POINTS***

**The Strength of State-Based Insurance Regulation**

- For almost two centuries, Americans have benefited from a competitive state-based regulatory system, with 12,000 regulators overseeing nearly 3,000 insurers.
- State regulation is locally accountable and responsive, ensuring policies reflect the needs of individual communities.
- A federal system would place decisions in the hands of unelected Washington bureaucrats unfamiliar with state-specific issues, potentially leading to reduced consumer choice and higher costs.

**What Congress Intended When Creating FIO**

- The Dodd-Frank Act of 2010 created the Federal Insurance Office (FIO) within the Treasury Department. FIO was statutorily set up to monitor and provide information, *not* to regulate.

**Overreach by FIO**

- Over the last sixteen years, FIO has produced politically motivated reports that added little value and exceeded FIO's statutory mission.
- It has also repeatedly duplicated and conflicted with the work of state insurance regulators.
- The office has sought to expand federal authority over insurance—contrary to its original mandate.

**Example: Climate Data Collection**

- FIO attempted to undertake a costly, duplicative climate-data collection initiative.
- Although studying climate risk is important, FIO *ignored the law requiring coordination* with state regulators before seeking information directly from insurers.
- State regulators and the NAIC had already established long-running climate-risk analysis and data collection efforts.

**State Regulator Response**

- The bipartisan National Association of Insurance Commissioners (NAIC) supports the office's elimination.

**Why FIO Should Be Checked**

- After more than a decade, FIO has shown little value and consistently challenged the effective, consumer-focused state-based insurance regulatory system.
- While FIO was less active this past year under different leadership at the U.S. Treasury Department, an agenda-driven FIO can always return absent a change in law.

## ***ASK (HOUSE & SENATE)***

- **We would ask that you support keeping the regulation of property/casualty insurance at the state level by cosponsoring both the:**
    i. McCarran-Ferguson Restoration Act (H.R. 7130) to replace FIO with a U.S. Insurance Representative, that would focus solely on coordinating federal policy on international insurance matters, serve as FSOC's nonvoting insurance member, and assist in administering the Terrorism Risk Insurance Program.

**Protect the State-Based System of Insurance Regulation (FIO Reform)**

ii. Insurance Data Protection Act (H.R. 3437/S. 1544) to remove FIO’s subpoena authority and prevent further intrusion into state regulatory responsibilities.

# Protect the State-Based System of Insurance Regulation

*In the interest of fostering healthy, competitive, state-based insurance markets that best serve and protect policyholders, NAMIC urges Congress to pursue reforms at the Federal Insurance Office (FIO).*

**Background**

In 1945, Congress passed the McCarran-Ferguson Act, reaffirming the states' authority to regulate insurance and establishing a limited antitrust exemption for the industry. This has helped sustain a strong state-based regulatory system that has protected insurer solvency and supported a competitive marketplace.

After the 2008 financial crisis, Congress undertook a sweeping overhaul of financial services regulation, culminating in the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act. Among its many provisions, the law created the Federal Insurance Office (FIO). Although FIO was designed with clear guardrails to prevent federal regulation of insurance, it has repeatedly pushed beyond this limited mandate and offended the sensibilities of state regulators. Over the past 16 years, FIO has continually tried to seize more power and in doing so duplicated and/or complicated efforts by state regulators. This has drawn criticism from the nonpartisan National Association of Insurance Commissioners (NAIC), which represents insurance regulators from all 50 states. For instance, in support of Representative Troy Downing's bill to eliminate FIO, the NAIC said, "FIO's ability to collect confidential supervisory information from insurers duplicates data already gathered by state regulators and undermines the trusted framework that ensures market stability."

That criticism reflects how insurance regulation should function. Insurers are required to submit extensive data as part of their routine oversight by state insurance regulators. Under statute, FIO is expected to rely on those regulators and publicly available sources before seeking information directly from insurers. Yet even though states were already collecting the relevant information, FIO has initiated duplicative data calls. For instance, they undertook a Terrorism Risk Insurance Act (TRIA) data collection in 2015–16, only to abandon it shortly thereafter. When FIO requests duplicative data, it increases compliance costs for impacted companies, which are eventually passed along to customers.

A more recent example of a duplicative data call was FIO's move into climate related data collection. FIO announced a data call intended to understand how climate change impacted the insurance industry and coverage gaps for underserved and vulnerable communities. While the stated objective is worthwhile, the proposal was developed in the face of an ongoing data collection effort by state regulators and the NAIC. The statute clearly directs FIO to collaborate with state insurance authorities to determine whether a new federal data collection is necessary. Instead, the proposed data call would have bypassed and exceeded state regulatory efforts while imposing significant compliance costs to produce information unlikely to yield reliable climate analysis.

Predictably, the proposal was met with resistance from a broad range of stakeholders, including state regulators, bipartisan members of Congress, and industry representatives. Although this pushback ultimately led FIO to agree to a statutorily appropriate joint data collection with the NAIC, the office has also acknowledged that it may pursue an additional, standalone data call in the future—signaling an intent to expand its regulatory role despite clear statutory limits.

**Reforms**

The potential for an intrusion into the state-based system of regulation from the office remains unless reforms are enacted. Legislative and administrative action is necessary to eliminate duplicative reporting burdens and restore the proper balance between federal and state responsibilities.

NAMIC supports two key reform bills aimed at reining in FIO's overreach:

- **McCarran-Ferguson Restoration Act (H.R. 7130):**
  Introduced by Rep. Troy Downing (R-MT), this bill would replace FIO with a U.S. Insurance Representative, appointed by the Treasury Secretary, whose mandate would be narrowly focused to "coordinate Federal efforts and develop Federal policy on prudential aspects of international matters." The representative would engage in International Association of Insurance Supervisors (IAIS) activities, negotiate covered agreements, serve as a non-voting member of Financial Stability Oversight Council (FSOC), and help administer TRIA—all while being required to consult with state regulators and report annually to Congress. Crafted after extensive stakeholder feedback, the revised H.R. 7130 has broad support, including from Big I, NAIC, APCIA, and—importantly—has moved ACLI from opposition to neutrality, significantly reducing industry pushback. The bill would also add a presidentially appointed, Senate-confirmed state insurance commissioner to the FSOC.
- **Insurance Data Protection Act (H.R. 3437 / S. 1544):**
  Introduced by Rep. Scott Fitzgerald (R-WI) and Sen. Katie Britt (R-AL), this legislation would remove FIO's subpoena authority—an effort originally sparked by the office's overbroad climate-related data collection efforts. Supporters include the American Council of Life Insurers (ACLI), American Property & Casualty Insurance Association (APCIA), Independent Insurance Agents & Brokers of America (Big "I"), and NAMIC.

Meaningful reform from the two bills above are needed to restore proper boundaries on FIO's authority and safeguard the state-based regulatory framework that has long served consumers effectively. For 170 years, property/casualty insurers have operated under the state-based system that best promotes accountability, expertise, and competition. This cannot be matched by federal bureaucratic oversight.

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# Resilience & Mitigation

Insurance marketplaces and their consumers continue to deal with a historically difficult risk environment. Risks are elevated by increasingly unpredictable severe weather; inflationary pressures on replacement costs, including construction materials and labor; and people moving en masse to riskier areas of the country. Insurance is simply a reflection of these factors and market signals, showing the potential loss costs associated with goods and services whose values have risen astronomically. In response, policymakers should invest in proven methods to bend the cost and loss curves, specifically resilience and mitigation.

**NAMIC asks you to support the bipartisan Fixing Emergency Management for Americans (FEMA) Act (H.R. 4669), legislation that modernizes and improves disaster preparedness and response while meaningfully reducing risk and hardening the built environment through critical front-end investment.**

**Background**

- Since 1980, natural disasters have cost the U.S. more than $3 trillion, with hurricanes, flooding, wildfires, and severe convective storms continuing to wreak havoc and placing upward pressure on claims severity.
- Despite associated losses of lives and property, disaster-prone regions of the country – particularly those susceptible to wildfire and flooding – continue to experience substantial population growth.
- NAMIC members and the property & casualty insurance industry have long advocated for shifting more resources to preventative measures to harden homes and communities against more frequent severe weather.
- According to the National Institute of Building Sciences, mitigation measures like modern, up-to-date building codes and residential retrofits can save up to $13 for every $1 invested.

**Solution**

- The bipartisan **Fixing Emergency Management for Americans (FEMA) Act** prioritizes overdue reforms for a broken agency at a pivotal time.
- The legislation elevates the FEMA Administrator to a cabinet-level position with a direct line to the President; empowers states and localities; creates a universal application for aid benefiting victims of natural disasters; and overhauls the agency's mitigation framework.
- Improving the resilience of homes and communities exposed to disaster risk would be achieved through enhanced pre-disaster mitigation grant allocation and a residential retrofit pilot program.
- Solutions along these lines will fundamentally reduce underlying risks and contribute to greater market stability, therefore helping with insurance affordability & availability and taxpayer savings.

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# Resilience & Mitigation

***TALKING POINTS***

- Insurance marketplaces and consumers are reckoning with a historically difficult risk environment:
  - increased risk amid changing weather patterns and unpredictable severe weather;
  - inflationary pressures on replacement costs, including construction materials and labor;
  - People moving to riskier areas of the country.

- 2025 marked the sixth consecutive year where insured losses in the U.S. from natural catastrophes surpassed the $100 Billion mark, even as no major hurricanes made landfall.

- A proven method to draw down disaster losses and costs is investment in resilience and mitigation.

- Studies show that $1 spent on mitigation measures, such as stronger, up-to-date building codes and residential retrofits, can save up to $13 in future losses.

- Despite this, the federal government continues to underfund pre-disaster mitigation that prevents Americans from suffering devastating losses, forcing exponentially more spending on post-disaster recovery – hurting taxpayers.

- The insurance industry helped found the Insurance Institute for Business & Home Safety (IBHS) and helps fund its cutting-edge research to strengthen homes and businesses to prevent losses.

- A modernized, focused, and streamlined pre-disaster mitigation grant program with proven cost-benefit analysis will improve resilience, reduce risk, and decrease costs associated with disaster relief for American homeowners and communities.

- FEMA is broken; the bipartisan FEMA Act elevates the Administrator to a cabinet-level position – and out from under the Department of Homeland Security – bringing more accountability with a direct line to the President.

- The bill would implement a formula-based mitigation funding stream, which requires states to pass through funds to local governments for investments saving lives & reducing long-term costs.

- The FEMA Act also seeks to harden aging housing stock through residential retrofits – as it will dramatically reduce losses and save post-disaster taxpayer spending.

- Disaster victims, both communities and individuals, need access to aid more quickly and in a streamlined manner; the FEMA Act achieves this through a universal application for individual assistance and upfront block grants for public assistance.

***ASK (HOUSE & SENATE)***

**We ask that you support bipartisan and commonsense legislation that will fundamentally reform and modernize a broken agency, such as the Fixing Emergency Management for Americans**

**(FEMA) Act (H.R. 4669). This package importantly overhauls the agency's mitigation framework to help reduce risk with stronger and safer building and rebuilding, contributing to more stability for families, communities, and markets.**

# Fixing Emergency Management through Commitment to Mitigation & Resilience

Congress must maintain and refine resources to invest in hardening homes and communities against increasingly severe weather, which will save lives, property, and taxpayer dollars. **NAMIC supports** H.R. 4669, the Fixing Emergency Management for Americans (FEMA) Act, a proposal that modernizes the Federal Emergency Management Agency's existing mitigation framework to better protect structures and homes before disaster strikes.

**Background**

As natural catastrophes and severe weather cause devastation to the nation's homes and communities, it is imperative that the federal government maintains an integral role in emergency management and prioritizes making America more resilient. Multiple studies have shown that every $1 spent on preventative pre-disaster mitigation and more resilient construction can save up to $13 in future losses. Despite this, the federal government continues to spend exponentially more in the wake of a disaster than on proactive, preventative measures designed to save lives and protect homes and infrastructure.

Following the enactment of the landmark Disaster Recovery Reform Act during the first Trump Administration, which NAMIC worked to advance into law, the Federal Emergency Management Agency (FEMA) created a new national pre-disaster mitigation program, which ultimately became the Building Resilient Infrastructure and Communities (BRIC) Program. The BRIC Program, following a recent review period and with certain changes implemented, is once again providing significant funds to state and community applicants for the purpose of undertaking risk-reducing pre-disaster mitigation measures ahead of severe weather events. The latest round of BRIC funding announced by FEMA in March makes $1 billion available.

While NAMIC applauds the BRIC Program coming back online, federal emergency management is at a crossroads. Global insured losses exceeded $100 billion for the sixth consecutive year in 2025, with the majority of those losses sustained in the U.S. – driven by catastrophic wildfires and severe convective storms. Advancing policies that elevate FEMA's role in emergency preparedness and response while improving resources for communities and individuals to harden homes and infrastructure remains critical. Congress should fundamentally reshape what's become a broken agency in FEMA through common-sense, bipartisan reforms that empower states and localities and prioritize mitigation and resilience measures.

**The Solution**

To help achieve these goals, H.R. 4669, the Fixing Emergency Management for Americans (FEMA) Act. H.R. 4669 was introduced in July 2025 by Transportation and Infrastructure Committee Chair Sam Graves (R-MO), the Committee's Ranking Member Rick Larsen (D-WA) as well as Reps. Greg Stanton (D-AZ) and Dan Webster (R-FL), the current Ranking Member and former Chair of the Subcommittee on Economic Development, Public Buildings, and Emergency Management, the subcommittee with jurisdiction over FEMA's disaster preparedness and mitigation programs.

The bipartisan bill includes a number of provisions designed to dramatically reform FEMA: restoring it to an independent, cabinet-level agency with a direct line to the President; transitioning FEMA Public Assistance for states to faster, project-based grants helping funds reach communities more quickly; creating a Universal Application for individual disaster survivors; strengthening and supporting efforts for communities and homeowners to invest in cost-effective mitigation improvements; and demanding greater agency transparency and accountability.

To overhaul the agency's existing mitigation framework, the FEMA Act would reform the BRIC Program by shifting to a formula-based funding stream and away from the current competitive structure, which would allocate 40 percent of funds equally among states, 20 percent to disaster-prone states dependent upon vulnerability to natural hazards, 20 percent based upon population size and income factors, and 20 percent contingent upon the number of economically distressed or rural communities. The FEMA Act would further clarify modern, up-to-date building code application and establish a residential retrofit pilot program to strengthen aging, at-risk housing stock.

In September 2025, the FEMA Act was passed by the House Transportation & Infrastructure Committee in a strong bipartisan vote of 57 – 3. The package boasts dozens of cosponsors from across the political and ideological spectrums. Since committee passage, NAMIC has been working with fellow emergency management stakeholders, committee staff, House offices, and the chamber's leadership on both sides of the aisle to urge its prompt consideration and passage during a pivotal time.

NAMIC believes that it is critical for Congress to advance the FEMA Act to restore trust and accountability to a broken agency that also administers lifesaving, impactful mitigation programs. Ensuring states and communities, including the nation's most vulnerable communities, have the tools they need to build more resilient structures and homes is of paramount importance as the nation strives to draw down disaster costs and losses.


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NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

# Litigation Tax Fairness

The growing practice of for-profit third-party litigation funding (TPLF) is increasingly threatening the integrity of American courtrooms and needlessly driving up costs for consumers. TPLF occurs when an outside agent –not directly involved in a legal dispute – pays a plaintiff's legal fees, with the expectation of financially profiting off any settlement or judgement from the lawsuit. There are growing concerns that TPLF incentivizes a torrent of foreign money to flood U.S. courts due to unequal tax treatment and a lack of disclosure requirements. Worse yet, its increasing scale and scope contributes to downstream effects on everyday Americans through higher prices.

**NAMIC asks you to support legislation that would establish appropriate tax treatment for foreign and domestic funders, the Tackling Predatory Litigation Funding (TPLF) Act (H.R. 3512 / S. 1821), to help rein in improper investment and protect U.S. consumers and taxpayers.**

## Background

- Legal system abuse has led to U.S. tort costs nearing $530 billion per year. That figure is equivalent to more than 2% of U.S. GDP and leads to a "tort tax" of $4,200 per household.
- One of the biggest facilitators of this abuse is TPLF: it reduces household purchasing power by over $600 per year, is responsible for 454k lost jobs annually, and accounts for $15B in lost annual tax revenue.
- Our judicial system incentivizes this investment in U.S. civil litigation due to favorable tax treatment. Foreign investors pay zero in U.S. taxes on their litigation profits, while domestic investors pay tax at the capital gains rate (23.8%). Meanwhile, plaintiffs pay taxes at the ordinary income rate (typically 37%).
- According to a 2023 report, the TPLF industry had $15.2 billion in assets under management deployed in U.S. litigation. The global market is expected to exceed $67 billion by 2037.
- Given TPLF for profit is a relatively new phenomenon – having exploded in the U.S. during the last 10-15 years – Congress should explore fair tax treatment of the practice.

## Parity Needed: Close the Loophole

- Due to the lack of comprehensive disclosure and potential for massive returns of 20-40%, the U.S. has become the epicenter of this abusive activity at the hands of shady investors, including foreign entities.
- Left unchecked, policymakers run the risk of allowing sophisticated investors to increasingly make windfall profits on the backs of U.S. consumers, taxpayers, and businesses.
- H.R. 3512 / S. 1821 implements a smart, equitable, and targeted tax on foreign and domestic funders' litigation profits and does NOT create a new tax on actual plaintiffs or their attorneys.

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# Third-Party Litigation Funding (TPLF) Tax Fairness

***TALKING POINTS***

- Legal system abuse is rampant in the U.S. The proliferation of questionable class action lawsuits, attorney advertising, TPLF, and nuclear verdicts directly impacts insurers and consumers, as companies are forced to absorb massive losses that have downstream effects on pricing of products.
  - Due to this abuse, insures' liability claims are rapidly increasing in both cost and severity.
- TPLF for profit is an arrangement where a funder that is not party to a lawsuit agrees to provide funding to a plaintiff or law firm in exchange for a significant percentage of any settlement. Bad actors, including foreign entities, are increasingly investing sizeable amounts of money for large returns, capitalizing off a lack of comprehensive disclosure and questionable tax treatment.
- Over the last decade, TPLF has grown into a major problem in the U.S., contributing to rising costs for consumers across the board through an annual "tort tax" estimated at $4,200 per household.
- In 2023, TPLF assets under management deployed in U.S. litigation reached $15.2 Billion. Projections show that total rising to over $50 Billion in the next decade.
- Sovereign wealth funds and foreign entities have invested billions in TPLF. We should not be allowing foreign nations to clog up our justice system with profit-seeking litigation.
  - While these TPLF investment firms are treating the U.S. court system like a casino, there are real questions about the tax treatment of the financial returns from litigation funding.
  - The U.S. judicial system incentivizes this investment, with foreign funders paying zero in U.S. taxes on their litigation profits and domestic funders paying tax at the capital gains rate (23.8%).
- By structuring TPLF contracts as complex investment vehicles, funders pay a more favorable tax rate when compared to the actual injured plaintiff who generally pays taxes at the ordinary income rate (37%) – while in most cases receiving more total money than the injured party.
- With securities or capital gains treatment, foreign investors can create a situation in which they avoid any U.S. tax obligation on their returns, despite using the U.S. court system to generate profit, which incentivizes foreign investment in more U.S. litigation for lucrative, tax-free returns.
- Regardless of one's views on TPLF, funders should pay their fair share in taxes. This new tax regime does nothing to restrict access to justice and does NOT create a new tax on plaintiffs.

***ASK (HOUSE & SENATE)***

- **We ask that you support legislation to ensure litigation tax fairness, the Tackling Predatory Litigation Funding (TPLF) Act (H.R. 3512 / S. 1821), which creates a smart, targeted tax on income derived from litigation activities by a nonparticipant. The current situation is unfair and untenable, and the time has come for lawmakers to update current tax law to address these issues.**

# Litigation Tax Fairness

Legal system abuse, particularly third-party litigation funding (TPLF), has fueled out of control litigation costs burdening the U.S. economy and consumers. TPLF for profit is a relatively new phenomenon that incentivizes a torrent of money – much of it foreign – to flood U.S. courts due to a tax loophole. Congress should act through updates to current tax law to help level the playing field in civil litigation. **NAMIC supports** H.R. 3512/S. 1821, the Tackling Predatory Litigation Funding (TPLF) Act, which implements a fair, targeted tax on sophisticated investors gambling on the justice system at the expense of U.S. businesses and consumers.

**Third Party Litigation Funding (TPLF) Defined**

TPLF is a side deal where an outside agent – uninvolved in a legal dispute – pays a plaintiff's legal fees with the expectation of financially profiting off any settlement or judgement from the lawsuit. Normally, this process is facilitated through a funding arrangement containing details such as the funder's identity, amount invested, payment schedule, and whether the outside party wields any strategic decision-making authority. This pertinent information is often withheld from defendants and judges due to the lack of a comprehensive disclosure regime. At the same time, defendants are required to disclose insurance coverage.

**Background**

There is a confluence of factors negatively impacting the property/casualty insurance market today, from extreme weather to stubborn inflationary pressures and short-sighted, heavy-handed regulation. On top of it all, legal system abuse continues to rear its ugly head. Specifically, TPLF for profit is increasingly threatening the integrity of American courtrooms and needlessly driving up costs for consumers.

A 2024 report from the U.S. Chamber of Commerce's Institute for Legal Reform found that U.S. tort costs reached approximately $529 billion in 2022, equivalent to more than 2 percent of GDP. This figure is expected to rise to over $900 billion by 2030. Fueled by excessive attorney advertising, nuclear verdicts, and TPLF, the economy at large continues to suffer from the resulting lost jobs and productivity, making American households subject to a "tort tax" of $4,200 each year.

Concerningly, according to a 2023 report, the TPLF industry had $15.2 billion in assets under management deployed in U.S. litigation. Global trends anticipate that the market could exceed $67 billion by 2037. While this shady practice began overseas, it's grown into a major problem in the U.S. over the last decade, raising costs for consumers across the board. In fact, a recent study shows that TPLF alone reduces household purchasing power by over $600 a year.

The practice of TPLF interferes with the attorney-client relationship as profit-seeking and the potential for massive returns forces defendants to absorb massive losses with downstream effects on everyday Americans through higher prices.

By structuring TPLF contracts as complex investment vehicles, funders pay a more favorable tax rate on their share of a court award when compared to the actual injured plaintiff – and in most cases receiving more total money than the injured party. Domestic investors pay tax at the capital gains rate (23.8%), and plaintiffs pay taxes at the ordinary income rate (typically 37%). Foreign investors, meanwhile, pay zero in U.S. taxes on their litigation profits. These dynamics have been confirmed by the Internal Revenue Service.

TPLF investors are empowered through funding agreements to make decisions in their own best interests as opposed to those of the plaintiffs. For example, they may get to decide when to settle or force matters into a long, drawn-out trial. The impact and volume of outside funding in civil disputes cannot be understated, as savvy investors and bad actors – including foreign adversaries – capitalize on a lack of oversight limitations and improper tax treatment, contributing to more litigation with the goal of lining their own pockets or gaining competitive advantages.

Congressional interest is building around legal system abuse in general and TPLF specifically. Some solutions have been floated around more disclosure and banning foreign entities from utilizing this practice due to national and economic security concerns; however, neither will end the problem of sophisticated funds profiting off the court system. That's why NAMIC is focused on a solution centered around TPLF contracts and targeting the income derived from complex tax avoidance schemes used by foreign investors and sovereign wealth funds.

**Tax Solution – TPLF Act**

With securities or capital gains tax treatment, foreign investors can effectively create a situation in which they avoid any U.S. tax obligation on their returns, despite using the U.S. court system to generate profit. This inherently incentivizes foreign investment in more U.S. litigation because of the potential for lucrative, tax-free returns.

NAMIC is supportive of a legislative proposal that would tax income derived by third parties from these perverse litigation activities, the Tackling Predatory Litigation Funding (TPLF) Act (H.R. 3512 / S. 1821). To close this tax loophole, Congress should create a specific tax on any income derived from litigation activities by a nonparticipant entering pre-judgment financing arrangements. This direct tax levied on the funding entities would be pegged to the ordinary income rate and ensure a portion of the TPLF funders' share would be paid to the IRS. It would additionally add 3.8% for using the court system, a public good, for profit.

The tax would be imposed solely on the third-party funders and – importantly – does not create a new tax on actual plaintiffs or their attorneys, nor would it limit traditional law firm financing, or disrupt post-judgement financing arrangements.

**Conclusion**

While NAMIC supports increased transparency efforts, Congress should prioritize this new tax-focused fix. especially as it represents a revenue raiser in cash-starved Washington. It is critical to address the growing costs of legal system abuse spurred by TPLF; several states have passed laws with corrective measures, and NAMIC believes it is time for Congress to follow suit with fixes taking place at a larger scale.

As Washington wraps up the 119th Congress and considers priority legislative vehicles, the TPLF Act would fundamentally change the economics of this burgeoning market by reducing the potential return on the investments involved. Changing the tax treatment of these investments will make them less appealing, particularly for foreign investors, and thereby help address the growing problem of legal system abuse for American companies and consumers.

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