

Title V – Office of National Insurance Act of 2009

Section-by-Section Analysis

Section 501. Short Title

Section 502. Office of National Insurance Established

This section establishes the Office of National Insurance (“Office”) within the Department of the Treasury. The Office, to be headed by a career Senior Executive Service Director appointed by the Secretary of the Treasury (“Secretary”), will have the authority to: (1) monitor all aspects of the insurance industry; (2) recommend to the Board of Governors of the Federal Reserve System (“Board”) that the Board designate an insurer, including its affiliates, as an entity subject to regulation as a Tier 1 financial holding company under Section 6 of the Bank Holding Company Act; (3) assist the Secretary in administering the Terrorism Risk Insurance Program; (4) coordinate Federal efforts and establish Federal policy on prudential aspects of international insurance matters; (5) determine whether State insurance measures are preempted by International Insurance Agreements on Prudential Measures; and (6) consult with the States regarding insurance matters of national importance and prudential insurance matters of international importance. The authority of the Office extends to all lines of insurance except health insurance.

In carrying out its functions, the Office may collect data and information on the insurance industry and insurers, as well as issue reports. It may require an insurer or an affiliate to submit data or information reasonably required to carry out functions of the Office, although the Office may establish an exception to data submission requirements for insurers meeting a minimum size threshold. Before collecting any data or information directly from an insurer, the Office must first coordinate with each relevant State insurance regulator (or other relevant Federal or State regulatory agency, in the case of an affiliate) to determine whether the information is available from such State insurance regulator or other regulatory agency. The Office will have power to require by subpoena that an insurer produce the data or information requested. Any non-publicly available data and information submitted to the Office will be subject to confidentiality provisions: privileges are not waived; any requirements regarding privacy or confidentiality will continue to apply; and information contained in examination reports will be considered subject to the exemption under the Freedom of Information Act for this type of information.

The Director will determine whether a State insurance measure is preempted because it: (a) directly or indirectly treats a non-United States insurer domiciled in a foreign jurisdiction that is subject to an International Insurance Agreement on Prudential Measures less favorably than it treats a United States insurer domiciled, licensed, admitted, or otherwise authorized in that State and (b) is inconsistent with an International Insurance Agreement on Prudential Measures. An “International Insurance Agreement on Prudential Measures” is defined as a written bilateral or multilateral agreement entered into between the United States and a foreign government, authority, or regulatory entity regarding prudential measures applicable to the business of insurance or reinsurance. Before making a determination of inconsistency, the Director will publish a notice in the Federal Register and will give interested parties the opportunity to submit comments. Upon making the determination, the Director will notify the appropriate State and

establish a reasonable period of time before the preemption will become effective. At the conclusion of that period, if the facts or law upon which the Director based his or her determination remain, the Director will publish a notice in the Federal Register that the preemption has become effective and notify the appropriate State. A State may not enforce its own insurance measure or that of any other State to the extent that it has been preempted by the Office.

The Director will consult with State insurance regulators, to the extent the Director determines appropriate, in carrying out the functions of the Office. Nothing in this section preempts any State insurance measure that governs any insurer's rates, premiums, underwriting or sales practices, or State coverage requirements for insurance.

The Director must also submit a report to the President and to Congress by September 30 of each year on the insurance industry and any actions taken by the Office regarding preemption of inconsistent State insurance measures.

This section also authorizes the Secretary of the Treasury to negotiate and enter into International Insurance Agreements on Prudential Measures on behalf of the United States.