

## MEMORANDUM

**To:** Members of the Committee on Financial Services

**From:** FSC Majority Staff

**Date:** September 24, 2015

**Subject:** September 29, 2015, Housing and Insurance Subcommittee Hearing on “The Impact of Domestic Regulatory Standards on the Competitiveness of U.S. Insurers”

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The Subcommittee on Housing and Insurance will hold a hearing entitled “The Impact of Domestic Regulatory Standards on the U.S. Insurance Market” on Tuesday, September 29, 2015, at 2:00 p.m. in Room 2128 of the Rayburn House Office Building. This hearing will examine the impact on the U.S. insurance market of existing and proposed federal and state regulatory standards.

This will be a one-panel hearing with the following witnesses:

- Mr. Michael McRaith, Director, Federal Insurance Office, U.S. Department of the Treasury
- Mr. Tom Sullivan, Senior Advisor, Department of Banking Supervision and Regulation, Federal Reserve Board of Governors
- Mr. John Huff, Director, Missouri Department of Insurance, Financial Institutions & Professional Registration
- Mr. Roy Woodall, Independent Member, Financial Stability Oversight Council, U.S. Department of the Treasury

### Background

For nearly 150 years, U.S. insurance companies of every kind—including property-casualty, life, reinsurance, health, and auto—have been regulated primarily by the states. Congress has periodically reviewed the effectiveness of state-based insurance regulation, and Congress and the states have worked to ensure greater regulatory uniformity within this system. In 1945, Congress passed the McCarran-Ferguson Act (15 U.S.C. §§ 1011 *et seq.*), which confirmed the states’ regulatory authority over insurance except where a federal law expressly provides otherwise.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. No. 111–203) enlarged the federal government’s role in the insurance industry by creating a federal office specifically tasked with insurance matters. The Dodd-Frank Act established the Federal Insurance Office (FIO) at the U.S. Department of the Treasury and charged the

FIO director with representing the United States in discussions contemplating the establishment of international insurance standards and advising the U.S. Trade Representative during trade negotiations, in addition to other domestically-focused duties such as examining and reporting on a variety of matters impacting the domestic insurance sector.

The Dodd-Frank Act requires that three members of the Financial Stability Oversight Council (FSOC), a 15-member inter-agency entity charged with identifying risks to U.S. financial stability, have expertise in the insurance industry.<sup>1</sup> The Dodd-Frank Act also grants the Federal Reserve Board of Governors (Board) regulatory authority over nonbank financial institutions, such as U.S.-domiciled insurers, that are designated by FSOC as being systemically important.

### **Federal Reserve Board of Governors Insurance Capital Standards**

Pursuant to the Dodd-Frank Act, the Board is in the process of developing a capital standard for FSOC-designated domestic insurers. On December 18, 2014, President Obama signed into law S. 2270, the *Insurance Capital Standards Clarification Act*, which unanimously passed both the House and Senate. This legislation clarified that the Board can apply insurance-based capital standards, rather than bank-centric ones, to the insurance companies that are subject to its jurisdiction. Since passage of S. 2270, the Board has worked to develop this domestic capital standard. Congress has expressed broad bipartisan intent that the Board base capital standards solely on the business model of domestic insurers.

### **Designation of Insurers and Systemically Important Financial Institutions**

To date, FSOC has designated three U.S.-domiciled insurers and one U.S.-domiciled finance company as SIFIs. Two of these designations were made over the dissent of some of the panel's members with insurance expertise. FSOC has faced criticism that it did not accurately assess the risks the designated firms posed to the U.S. financial system, and that it did not provide clear guidance as to what steps the firms could take to reduce their risk and therefore merit "de-designation." One domestic insurer has filed a lawsuit challenging its designation as a nonbank SIFI.

### **Coordination of State and Federal Regulators**

While the Dodd-Frank Act expanded the federal government's oversight of the insurance industry, it also preserved the states' general authority to regulate insurance and to resolve failed insurance firms, and it required that FIO consult with state regulators on insurance matters. The coordination of state and federal regulators has become increasingly important, particularly given the federal government's growing role in insurance regulation and ongoing discussions at the International Association of Insurance

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<sup>1</sup> Of the three insurance-related slots on the FSOC, two are non-voting: the FIO Director and a state insurance commissioner. The third slot, which confers voting privileges, is occupied by "an independent member appointed by the President, by and with the advice and consent of the Senate, having insurance expertise." Roy Woodall, a former state insurance commissioner, was confirmed by the Senate to fill this position on September 26, 2011.

Supervisors (IAIS). The IAIS is an international insurance standard-setting body whose mission is to establish “standards, principles, and guidance papers” and to provide training for insurance regulators.

### **Federal Insurance Office**

Mr. Michael McRaith, who is the former Illinois insurance commissioner, has served as the FIO Director since June 2011. Under the Dodd-Frank Act, the director is charged with a number of duties in addition to those relating to international insurance matters. FIO has the authority to monitor all aspects of the insurance industry; to monitor the extent to which traditionally underserved communities and consumers and low- and moderate-income persons have access to affordable insurance products; and to recommend to FSOC that it designate an insurer as a SIFI. FIO also has the authority to receive and collect data and information on and from the insurance industry and insurers; to enter into information-sharing agreements; and to issue reports regarding all lines of insurance with the exception of health insurance. FIO is also charged with advising FSOC on insurance matters, assisting the Secretary of the Treasury with the administration of the Terrorism Risk Insurance Program, and establishing the board of directors for and supervising NARAB II, a national licensing system for insurance agents and brokers.