

MEMORANDUM

To: Members of the Committee on Financial Services

From: FSC Majority Staff

Date: February 13, 2017

Subject: February 16, 2017, Housing and Insurance Subcommittee Hearing on “Assessing the U.S.-EU Covered Agreement”

The Subcommittee on Housing and Insurance will hold a hearing entitled “Assessing the U.S.-EU Covered Agreement” on Thursday, February 16, 2017, at 10:00 a.m. in Room 2128 of the Rayburn House Office Building. This hearing will examine the January 13, 2017 announcement from the U.S. Department of Treasury (Treasury) that the United States and the European Union (EU) completed negotiations on a Covered Agreement entitled, “Bilateral Agreement between the European Union and the United States of America on Prudential Measures Regarding Insurance and Reinsurance.”

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

- The Honorable Ted Nickel, Commissioner, Office of the Commissioner of Insurance, State of Wisconsin, on behalf of the National Association of Insurance Commissioners
- Mr. Charles Chamness, President and CEO, National Association of Mutual Insurance Companies
- Ms. Leigh Ann Pusey, President and CEO, American Insurance Association
- Mr. Michael T. McRaith, Former Director, Federal Insurance Office

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 and the states have occasionally reviewed the effectiveness of the state-based regulation of insurance and coordinated efforts to achieve greater regulatory uniformity. 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 (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 a Federal Insurance Office (FIO) at the Treasury Department and charged the director of the FIO with representing the interests of U.S. insurers during the negotiation of international

agreements and advising the United States Trade Representative (USTR) during trade negotiations.

Pursuant to 31 U.S.C. §314, the Federal Insurance Office Act of 2010 authorizes the Treasury and the USTR jointly to negotiate a covered agreement with one or more foreign governments, authorities, or regulatory entities. A covered agreement is a “written bilateral or multilateral agreement regarding prudential measures with respect to the business of insurance or reinsurance.” After such an agreement, the FIO has specific authority to preempt state laws that are inconsistent with the agreement and result in less favorable treatment “of a non-United States insurer domiciled in a foreign jurisdiction that is subject to a covered agreement than a United States insurer domiciled, licensed, or otherwise admitted in that State.” Such preemption, however, may not apply to any state insurance measure that governs any insurer's rates, premiums, underwriting, or sales practices. Although FIO and USTR must consult with Congress on the negotiations, the statute does not require specific authorization or approval from Congress for a covered agreement.

Covered Agreement

In a November 20, 2015 letter to Congress, Treasury and the USTR announced their intention to initiate negotiations to enter into a covered agreement with the European Union. A subsequent notice was issued in the Federal Register to this effect on January 19, 2016.

Treasury and the USTR stated in its letter to Congress that “the United States and the EU are the two largest insurance markets in the world and both markets present important opportunities for organic and acquisition-based growth for insurers and reinsurers. A covered agreement with the EU would level the regulatory playing field for U.S.-based insurers and reinsurers operating there, and further confirm that the existing U.S. insurance regulatory system serves the goals of insurance sector oversight, policyholder protection, and national and global financial stability.”

On January 13, 2017, Treasury and USTR notified Congress that they concluded negotiations with the EU on a covered agreement and provided final legal text of the agreement, which began the 90-day Congressional layover period outlined in the statute. The covered agreement addresses three areas of prudential insurance supervision: group supervision, reinsurance, and exchange of information between supervisory authorities.