

Federal Insurance Office Act of 2009
Section-by-Section Analysis of the Amendment in the Nature of a Substitute
October 16, 2009

Section 1. Short Title

This section designates the short title of the bill as the Federal Insurance Office Act of 2009.

Section 2. Federal Insurance Office Established

(a) Establishment of office

This subsection creates a new Section 313 under Subchapter I of Chapter 3 of Title 31 of the U.S. Code to establish a Federal Insurance Office (FIO). It also creates a Section 314 concerning international insurance agreements on prudential measures.

Section 313. Federal Insurance Office

(a) Establishment and (b) Leadership

Under subsection (a) and subsection (b) of the new Section 313, a FIO is established within the Treasury Department to be headed by a Director, an individual appointed by the Treasury Secretary. To build insurance expertise and ensure continuity in the FIO in the long-term, this position will be a career-reserved position in the Senior Executive Service.

(c) Functions

Under the direction of the Secretary, the FIO Director will monitor all aspects of the insurance industry, including matters of systemic risk. The Director also has the authority to recommend an insurer and its affiliates for heightened regulation by an entity identified as having systemic risk responsibility. Further, the Director shall administer the Terrorism Risk Insurance Program.

The Director shall additionally coordinate Federal efforts and establish Federal policy on prudential aspects of international insurance matters, including assisting the Secretary in negotiating international insurance agreements on prudential measures. Moreover, the Director shall determine whether State insurance measures are preempted by an international insurance agreement on prudential measures.

The Director shall further consult with the States regarding insurance matters of national importance and prudential insurance matters of international importance. The Director shall perform such other related duties as may be assigned by the Secretary, as well. Finally, the FIO shall advise the Secretary on major domestic and prudential international insurance policy matters.

(d) Scope

The authority of the FIO extends to all lines of insurance except health insurance.

(e) Gathering of information

In carrying out its functions, the FIO may collect data and information on the insurance industry and insurers, enter into information-sharing agreements, analyze and disseminate data and information, and issue reports. The FIO may require an insurer or an affiliate of an insurer to submit data or information reasonably required to carry out the FIO's functions. The FIO, however, may also establish an exception to data submission requirements for small insurers on a case-by-case basis.

Before collecting data or information directly from an insurer or its affiliate, the FIO must first coordinate with each relevant State insurance regulator (or other relevant Federal or State regulatory agency, in the case of an affiliate) and any publicly available sources to determine if the information is already available from such State regulators, individually or collectively, another regulatory agency, or elsewhere.

Confidentiality protections for any non-publicly available data and information submitted to the FIO are put in place. The FIO can share information with State insurance regulators, both individually and collectively, through an information sharing agreement. Information in the FIO's possession will be subject to the Freedom of Information Act and its exemptions as appropriate.

(f) Preemption of State insurance measures

The subsection provides the Director with a limited preemption authority in instances when a State insurance measure treats a non-U.S. insurer domiciled in a foreign jurisdiction that is subject to an international insurance agreement on prudential measures less favorably than it treats a U.S. insurer domiciled, licensed, admitted or otherwise authorized in that State. The Director may also issue a preemption determination when a State insurance measure is inconsistent with an international insurance agreement on prudential measures. Potential preemption of a State insurance measure shall only flow from international insurance agreements on prudential measures entered into after the enactment of the bill.

Before making a determination of inconsistency, the Director must publish a notice in the *Federal Register* and give interested parties a reasonable opportunity to submit comments. In addition to considering the comments received, the Director must also consider the effect of preemption on the protection of policyholders and policy claimants; the maintenance of the safety, soundness, integrity and financial responsibility of any entity involved in the business of insurance; ensuring the integrity and stability of the U.S. financial system; the need to establish a supervisory or regulatory authority of the FIO over any entity involved in the business of insurance or insurance operations in the United States; and the creation of a gap or void in financial or market conduct regulation of any entity involved in the business of insurance.

The Director's determination regarding State insurance measures shall be limited to the subject matter of the prudential measures applicable to the business of insurance contained within the international insurance agreement on prudential measures involved.

Upon making any determination of inconsistency, the Director must notify the appropriate State of the extent of the inconsistency; establish a reasonable period of time of not less than 90 days before the preemption becomes effective; and notify the

House Financial Services Committee and the Senate Banking Committee of the inconsistency.

At the conclusion of that reasonable period of time, if the facts or law upon which the determination was made remain, the Director will publish a notice in the *Federal Register* that the preemption has become effective and notify the appropriate State. At this point, a State may not enforce its own insurance measure or that of any other State to the extent that the FIO has preempted the measure.

(g) Applicability of Administrative Procedure Act

Determinations of inconsistency shall be subject to the administrative procedure and judicial review provisions of the Administrative Procedures Act.

(h) Regulations, policies and procedures

Under this subsection, the Secretary may issue orders, regulations, policies and procedures to implement the FIO's duties and powers.

(i) Consultation

In carrying out the functions of the FIO, the Director must consult with State insurance regulators, individually and collectively, as appropriate.

(j) Savings provisions

This subsection clarifies that the Director shall not preempt insurance measures that govern any insurer's rates, premiums, underwriting or sales practices, or State coverage requirements for insurance. The Director also may not preempt the application of the anti-trust laws of any State to the business of insurance. The subsection additionally provides that the preemption power may not be construed to alter, amend or limit the responsibility of any department or agency of the Federal government to issue regulations under any Federal law regulating the provision of consumer financial products or services. Finally, the preemption provisions in this section shall not affect the preemption of any State insurance measure otherwise inconsistent with and preempted by Federal law.

(k) Retention of existing State regulatory authority

This section clarifies that the bill does not establish general supervisory or regulatory authority by the FIO or the Treasury Department over the business of insurance.

(l) Annual report to Congress

Beginning in 2011, the Director must submit a report to the President and to the House Financial Services Committee and the Senate Banking Committee by September 30 of each year about the insurance industry, any actions taken by the FIO regarding preemption of inconsistent State insurance measures, and any other information deemed relevant by the Director or as requested by either Committee.

(m) Use of existing resources, (n) Definitions, and (o) Appropriations

To carry out its functions, the FIO may employ personnel, occupy facilities, and use the available resources of the Treasury Department. Definitions for certain terms used in the legislation, including international insurance agreement on prudential

measures, are also provided. Finally, an authorization for the appropriation of such sums as necessary for each fiscal year for the FIO is supplied.

Section 314. International Insurance Agreements on Prudential Measures

The Secretary is given the authority to negotiate and enter into international insurance agreements on prudential measures on behalf of the United States.

(b) Duties of Secretary

In addition to existing statutory responsibilities, the Treasury Secretary will have a duty to advise the President on major domestic and international prudential policy issues in connection with all lines of insurance except health insurance.

(c) Clerical amendment

The subsection makes conforming amendments to the relevant table of sections of the U.S. Code.