

114TH CONGRESS
2D SESSION

H. R. 5143

IN THE SENATE OF THE UNITED STATES

DECEMBER 8, 2016

Received

AN ACT

To provide greater transparency and congressional oversight
of international insurance standards setting processes,
and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Transparent Insurance
3 Standards Act of 2016”.

4 **SEC. 2. CONGRESSIONAL FINDINGS.**

5 The Congress finds the following:

6 (1) The State-based system for insurance regu-
7 lation in the United States has served American con-
8 sumers well for more than 150 years and has fos-
9 tered an open and competitive marketplace with a
10 diversity of insurance products to the benefit of pol-
11 icyholders and consumers.

12 (2) Protecting policyholders by regulating to en-
13 sure an insurer’s ability to pay claims has been the
14 hallmark of the successful United States system and
15 should be the paramount objective of domestic pru-
16 dential regulation and emerging international stand-
17 ards.

18 (3) United States officials participating in dis-
19 cussions or negotiations regarding international in-
20 surance standards shall support standards designed
21 for the protection of policyholders.

22 (4) The Secretary of the Treasury shall seek
23 advice and recommendations from a diverse group of
24 outside experts in performing the duties and au-
25 thorities of the Secretary to coordinate Federal ef-

(6) Any international standard agreed to at the International Association of Insurance Supervisors is not self-executing in the United States for any insurer until implemented through the required Federal or State legislative or regulatory process.

17 The objectives of the United States regarding inter-
18 national insurance standards are as follows:

(2) To ensure, pursuant to enactment of the Insurance Capital Standards Clarification Act of 2014 (Public Law 113–279), standards that are appro-

1 appropriate for insurers and are not bank-centric in na-
2 ture.

3 (3) To promote a principles-based approach to
4 insurance supervision, in which capital adequacy is
5 assessed using risk-based capital requirements for
6 insurance combined with qualitative risk assessment
7 and management tools.

8 (4) To consider the most efficient and least dis-
9 ruptive approaches to enhancing regulatory assess-
10 ment of the capital adequacy of insurance groups,
11 including tools that are already in place.

12 (5) To ensure that any international insurance
13 standard recognizes prudential measures used within
14 the United States as satisfying standards finalized
15 by international standard-setting organizations.

16 (6) To support increasing transparency at any
17 global insurance or international standard-setting or-
18 ganization in which the United States participates,
19 including advocating for greater stakeholder public
20 observer access to working groups and committee
21 meetings of the International Association of Insur-
22 ance Supervisors.

23 (7) To ensure that there is a sufficient period
24 for public consultation and comment regarding any
25 proposed international insurance standard before it

1 takes effect and that any such final standard is com-
2 posed in plain writing (as such term is defined in
3 section 3 of the Plain Writing Act of 2010 (5 U.S.C.
4 301 note)).

5 (8) To ensure that the Secretary of the Treas-
6 ury and the Board of Governors of the Federal Re-
7 serve System achieve consensus positions with State
8 insurance commissioners when the Secretary and the
9 Board are United States participants in discussions
10 on insurance issues before the International Associa-
11 tion of Insurance Supervisors, Financial Stability
12 Board, or any other international forum of financial
13 regulators or supervisors that considers such issues.

14 (9) To consider the impact of any such stand-
15 ard on the availability and cost of products to con-
16 sumers.

17 (10) To avoid measures that could limit the
18 availability and accessibility of risk protection and
19 retirement security products that are essential to
20 meeting the needs of aging populations.

21 (11) To ensure that the merits of existing
22 State-based capital standards are recognized and in-
23 corporated in any domestic or global insurance cap-
24 ital standard.

1 (12) To advocate for insurance regulatory
2 standards that are based on the nature, scale, and
3 complexity of the risks posed by the regulated insur-
4 ance group and entity or activity.

5 **SEC. 4. REQUIREMENTS FOR CONSENT TO ADOPT INTER-**
6 **NATIONAL INSURANCE STANDARDS.**

7 (a) PUBLICATION OF STANDARDS; ADOPTION OF
8 CAPITAL AND PRUDENTIAL STANDARDS.—The United
9 States may not agree to, accept, establish, enter into, or
10 consent to the adoption of a final international insurance
11 standard with an international standard-setting organiza-
12 tion or a foreign government, authority, or regulatory enti-
13 ty unless the requirements under both of the following
14 paragraphs are complied with:

15 (1) PUBLICATION.—The requirements under
16 this paragraph are complied with if the conditions
17 under one of the following subparagraphs have been
18 met:

19 (A) BY FEDERAL RESERVE AND TREAS-
20 URY.—The Chairman of the Board of Gov-
21 ernors of the Federal Reserve System and the
22 Secretary of the Treasury have caused the pro-
23 posed text of the proposed final international
24 insurance standard to be published in the Fed-
25 eral Register and made available for public

1 comment for a period of not fewer than 30 days
2 (which period may run concurrently with the
3 90-day period referred to in subsection (b)(3)).

4 (B) BY STATE INSURANCE COMMIS-
5 SIONERS.—The State insurance commissioners
6 have caused the proposed text of the proposed
7 international insurance standard to be pub-
8 lished in a similar form and manner that pro-
9 vides for notice and public comment.

10 (2) CAPITAL STANDARD.—In the case only of a
11 final international insurance standard setting forth
12 any capital standard or standards for insurers—

13 (A) such international capital standard is
14 consistent with capital requirements set forth in
15 the State-based system of insurance regulation;

16 (B) the Board has issued capital require-
17 ments for insurance companies supervised by
18 the Board and subject to such requirements,
19 which shall be issued through rulemaking in ac-
20 cordance with the procedures established under
21 section 553 of title 5, United States Code, re-
22 garding substantive rules, under which the peri-
23 ods for notice and public comment shall each
24 have a duration of not fewer than 60 days; and

1 (C) to the extent that such international
2 capital standard is intended to be applied to a
3 company or companies supervised by the Board
4 of Governors of the Federal Reserve System, is
5 consistent with the capital requirements of the
6 Board for such companies.

7 (b) SUBMISSION AND LAYOVER PROVISIONS.—The
8 Secretary and the Board may not agree to, accept, estab-
9 lish, enter into, or consent to the adoption of an inter-
10 national insurance standard established through an inter-
11 national standard-setting organization or a foreign govern-
12 ment, authority, or regulatory entity unless—

13 (1) the Secretary and the Board have—

14 (A) conducted an analysis under subsection
15 (c) of the proposed international insurance
16 standard; and

17 (B) submitted to the covered congressional
18 committees, on a day on which both Houses of
19 Congress are in session, a copy of the proposed
20 final text of the proposed international insur-
21 ance standard and the report required under
22 subsection (c)(2) regarding such analysis;

23 (2) the Secretary and the Chairman of the
24 Board have determined, pursuant to such analysis,

1 that the proposed standard will not result in any
2 change in State law;

3 (3) with respect to a capital standard under
4 subsection (a)(2), the Secretary and the Chairman
5 of the Board certify that the proposed international
6 capital standard is designed solely to help ensure
7 that sufficient funds are available to pay claims to
8 an insurer's policyholders in the event of the liquida-
9 tion of that entity; and

10 (4) a period of 90 calendar days beginning on
11 the date on which the copy of the proposed final text
12 of the standard is submitted to the covered congres-
13 sional committees under paragraph (1)(B) has ex-
14 pired, during which period the Congress may take
15 action to approve or reject such final standard.

16 (c) JOINT ANALYSIS BY CHAIR OF THE FEDERAL
17 RESERVE AND SECRETARY OF THE TREASURY.—

18 (1) IN GENERAL.—An analysis under this sub-
19 section of a proposed final international insurance
20 standard shall be an analysis conducted by the Sec-
21 retary and the Chairman of the Board of Governors
22 of the Federal Reserve System, in consultation with
23 the State insurance commissioners, of the impact of
24 such standard on consumers and markets in the

1 United States and whether any changes in State law
2 will result from such final standard.

3 (2) REPORT.—Upon completion of an analysis
4 under this subsection of a final international insur-
5 ance standard, the Secretary and the Board shall
6 submit a report on the results of the analysis to the
7 covered congressional committees and the Comp-
8 troller General of the United States. The report
9 shall include a statement setting forth the deter-
10 mination made pursuant to paragraph (1) regarding
11 any changes in State law resulting from such final
12 standard.

13 (3) NOTICE AND COMMENT.—

14 (A) NOTICE.—The Secretary and the
15 Chairman of the Board of Governors of the
16 Federal Reserve System shall provide notice be-
17 fore the date on which drafting the report is
18 commenced and after the date on which the
19 draft of the report is completed.

20 (B) OPPORTUNITY FOR COMMENT.—There
21 shall be an opportunity for public comment for
22 a period beginning on the date on which the re-
23 port is submitted under paragraph (2) and end-
24 ing on the date that is not fewer than 60 days
25 after the date on which the report is submitted.

1 Nothing in this subparagraph shall affect the
2 authority of the Board to issue the rule referred
3 to in subsection (a)(2).

4 (4) REVIEW BY COMPTROLLER GENERAL.—

5 Upon submission of a report pursuant to paragraph
6 (2) to the Comptroller General, the Comptroller
7 General shall review the report and shall submit a
8 report to the Congress setting forth the conclusions
9 of the Comptroller General’s review.

10 (d) LIMITED EFFECT.—This section may not be con-
11 strued to establish or expand any authority to implement
12 an international insurance standard in the United States
13 or for the United States or any representative of the Fed-
14 eral Government to adopt or enter into any international
15 insurance standard.

16 (e) TREATMENT OF STATE LAW.—In accordance
17 with the Act of March 9, 1945 (Chapter 20; 59 Stat. 33;
18 15 U.S.C. 1011 et seq.), commonly referred to as the
19 “McCarran-Ferguson Act”, this section may not be con-
20 strued to preempt State law.

21 **SEC. 5. REPORTS.**

22 (a) REPORTS AND TESTIMONY BY SECRETARY OF
23 THE TREASURY AND CHAIR OF THE FEDERAL RE-
24 SERVE.—The Secretary and the Chairman of the Board
25 of Governors of the Federal Reserve System shall submit

1 to the covered congressional committees an annual report
2 and provide testimony, not less often than every 6 months,
3 to the covered congressional committees on the efforts of
4 the Secretary and the Chairman with the State insurance
5 commissioners with respect to international insurance
6 standard-setting organizations and international insur-
7 ance standards, including—

8 (1) a description of the insurance standard-set-
9 ting issues under discussion at international stand-
10 ard-setting bodies, including the Financial Stability
11 Board and the International Association of Insur-
12 ance Supervisors;

13 (2) a description of the effects that inter-
14 national insurance standards could have on con-
15 sumers and insurance markets in the United States;

16 (3) a description of any position taken by the
17 Secretary and the Board in international insurance
18 discussions or on any international insurance stand-
19 ard;

20 (4) a description of the efforts by the Secretary
21 and the Board to increase transparency and ac-
22 countability at the Financial Stability Board with re-
23 spect to insurance proposals and the International
24 Association of Insurance Supervisors, including ef-
25 forts to provide additional public access to working

1 groups and committees of the International Associa-
2 tion of Insurance Supervisors; and

3 (5) a description of how the Secretary and the
4 Board are meeting the objectives set forth in section
5 3, or, if such objectives are not being met, an expla-
6 nation of the reasons for not meeting such objec-
7 tives.

8 (b) REPORTS AND TESTIMONY BY STATE INSURANCE
9 COMMISSIONERS.—The State insurance commissioners
10 may provide testimony or reports to the Congress on the
11 issues described in subsection (a).

12 (c) REPORT ON TRANSPARENCY.—Not later than
13 180 days after the date of enactment of this Act, the
14 Chairman of the Board of Governors of the Federal Re-
15 serve System and the Secretary shall submit to the Con-
16 gress a report and provide testimony to the Congress on
17 the efforts of the Chairman and the Secretary pursuant
18 to subsection (a)(4) of this section to increase trans-
19 parency at meetings of the International Association of In-
20 surance Supervisors.

21 (d) GAO REPORT ON TRANSPARENCY OF OUTSIDE
22 ORGANIZATIONS.—

23 (1) IN GENERAL.—Not later than 1 year after
24 the date of enactment of this Act, the Comptroller
25 General of the United States shall submit to the cov-

1 ered congressional committees a report, and provide
2 testimony to such committees, identifying and ana-
3 lyzing the transparency and accountability of any or-
4 ganization acting as a designee of, or at the direc-
5 tion of, the head of a State insurance department on
6 issues related to international insurance standards,
7 which is not employed directly by the State.

8 (2) CONTENT.—The report and testimony re-
9 quired under this section shall include a description
10 and analysis of—

11 (A) the role, involvement, or relationship,
12 of any organization identified pursuant to para-
13 graph (1), of, with, or to the State insurance
14 departments’ activities as authorized by, di-
15 rected by, or otherwise referred to in this Act,
16 including a description and analysis regarding
17 such organization’s participation in policy and
18 decision-making deliberations and activities re-
19 lated to international insurance standards;

20 (B) any financial support provided by such
21 organization to any State insurance department
22 personnel in furtherance of their activities re-
23 lated to international insurance standards, the
24 nature and amount of such support, and any
25 understandings between the organization and

1 the State regarding travel protocols and State
2 laws governing State officials' receipt of, bene-
3 fitting from, or being subsidized by, outside
4 funds;

5 (C) the budget, including revenues and ex-
6 penses, of any organization identified pursuant
7 to paragraph (1) relating to participation in
8 international insurance discussions on issues be-
9 fore, involving, or relating to the International
10 Association of Insurance Supervisors, the Fi-
11 nancial Stability Board, or any other inter-
12 national forum of financial regulators or super-
13 visors that considers such issues, and how the
14 organization collects money to fund such activi-
15 ties;

16 (D) whether each such budget of such an
17 organization is developed under a process com-
18 parable in its transparency and accountability
19 to the process under which budgets are devel-
20 oped and appropriated for State departments of
21 insurance and Federal executive branch regu-
22 latory agencies, including—

23 (i) an identification of any bodies
24 independent of the organization that set

standards for and/or oversee that organization's budgeting process; and

(ii) a description of the extent to which and how the organization, in funding its operations, uses or benefits from its members' ability to compel entities subject to its members' regulatory authority to use the services of the organization or any of its affiliates; and

(E) the extent to which the work product of any organization identified pursuant to paragraph (1) has the effect of establishing any self-executing national standards, and in what way, and whether such standards are developed under processes comparable in their transparency and accountability to the process under which national standards are developed by the Congress or Federal executive branch agencies.

SEC. 6. DEFINITIONS.

In this Act:

(1) **BOARD.**—The term “Board” means the Board of Governors of the Federal Reserve System, or the designee of the Board.

(2) **COVERED CONGRESSIONAL COMMITTEES.**—
The term “covered congressional committees” means

1 the Committee on Financial Services of the House of
2 Representatives and the Committee on Banking,
3 Housing and Urban Affairs of the Senate.

4 (3) INTERNATIONAL INSURANCE STANDARD.—

5 The term “international insurance standard” means
6 any international insurance supervisory standard de-
7 veloped by an international standards setting organi-
8 zation, or regulatory or supervisory forum, in which
9 the United States participates, including the Com-
10 mon Framework for the Supervision of Internation-
11 ally Active Insurance Groups, the Financial Stability
12 Board, and the International Association of Insur-
13 ance Supervisors.

14 (4) SECRETARY.—The term “Secretary” means
15 the Secretary of the Treasury, or the Secretary’s
16 designee.

17 (5) STATE INSURANCE COMMISSIONERS.—The
18 term “State insurance commissioners” means the
19 heads of the State insurance departments or their
20 designees acting at their direction.

21 **SEC. 7. TREATMENT OF COVERED AGREEMENTS.**

22 Section 314 of title 31, United States Code is amend-
23 ed—

24 (1) in subsection (c)—

1 (A) by redesignating paragraphs (1) and
2 (2) as paragraphs (2) and (3), respectively; and

3 (B) by inserting before paragraph (2), as
4 so redesignated, the following new paragraph:

5 “(1) the Secretary of the Treasury and the
6 United States Trade Representative have caused to
7 be published in the Federal Register, and made
8 available for public comment for a period of not
9 fewer than 30 days (which period may run concu-
10 rently with the 90-day period for the covered agree-
11 ment referred to in paragraph (3)), the proposed
12 text of the covered agreement;” and

13 (2) by adding at the end the following new sub-
14 sections:

15 “(d) CONSULTATION WITH STATE INSURANCE COM-
16 MISSIONERS.—In any negotiations regarding a con-
17 templated covered agreement, the Secretary and the
18 United States Trade Representative shall consult with and
19 directly include State insurance commissioners.

20 “(e) PROHIBITION ON REGULATORY AUTHORITY.—
21 In accordance with subsections (k) and (l) of section 313,
22 a covered agreement shall not be used to establish or pro-
23 vide the Federal Insurance Office or the Treasury with
24 any general supervisory or regulatory authority over the

1 business of insurance or with the authority to participate
 2 in a supervisory college or similar process.

3 “(f) TREATMENT UNDER OTHER LAW.—A covered
 4 agreement shall not be considered an international insur-
 5 ance standard for purposes of the Transparent Insurance
 6 Standards Act of 2016 and shall not be subject to such
 7 Act.”.

8 **SEC. 8. DUTIES OF INDEPENDENT MEMBER OF FINANCIAL**
 9 **STABILITY OVERSIGHT COUNCIL.**

10 Subsection (a) of section 112 of the Dodd-Frank Wall
 11 Street Reform and Consumer Protection Act (12 U.S.C.
 12 5322(a)) is amended by adding at the end the following
 13 new paragraph:

14 “(3) DUTIES OF INDEPENDENT MEMBER.—To
 15 assist the Council with its responsibilities to monitor
 16 international insurance developments, advise Con-
 17 gress, and make recommendations, the Independent
 18 Member of the Council shall have the authority to—

19 “(A) regularly consult with international
 20 insurance supervisors and international finan-
 21 cial stability counterparts;

22 “(B) consult with, advise, and assist the
 23 Secretary of the Treasury with respect to rep-
 24 resenting the Federal Government of the
 25 United States, as appropriate, in the Inter-

1 national Association of Insurance Supervisors
2 (including to become a non-voting member
3 thereof), particularly on matters of systemic
4 risk, and to consult with the Board of Gov-
5 ernors of the Federal Reserve System and the
6 States concerning such matters;

7 “(C) attend the Financial Stability Board
8 of The Group of Twenty and join with other
9 members from the United States, including on
10 matters related to insurance and financial sta-
11 bility, and provide for the attendance and par-
12 ticipation at such Board, on matters related to
13 insurance and financial stability, of State insur-
14 ance commissioners; and

15 “(D) attend, with the United States dele-
16 gation, the Organization for Economic Coopera-
17 tion and Development and observe and partici-
18 pate at the Insurance and Private Pensions
19 Committee of such Organization on matters re-
20 lated to insurance and financial stability.”.

21 **SEC. 9. STATE INSURANCE REGULATOR INVOLVEMENT IN**
22 **INTERNATIONAL STANDARD SETTING.**

23 Parties representing the United States at the Finan-
24 cial Stability Board of the Group of Twenty on matters,
25 and in meetings, related to insurance and financial sta-

1 bility shall consult with, and seek to include in such meet-
2 ings, the State insurance commissioners.

3 **SEC. 10. RULE OF CONSTRUCTION.**

4 Nothing in this Act or the amendments made by this
5 Act may be construed to support or endorse the domestic
6 capital standard for insurers referred to in section 4(a)(2)
7 or any such domestic capital standards established by the
8 Board.

9 **SEC. 11. SECURITIES AND EXCHANGE COMMISSION RE-**
10 **SERVE FUND.**

11 Clause (i) of section 4(i)(2)(B) of the Securities Ex-
12 change Act of 1934 (15 U.S.C. 78d(i)(2)(B)(i)) is amend-
13 ed by inserting before the semicolon the following: “, ex-
14 cept that for fiscal year 2017, the amount deposited may
15 not exceed \$43,000,000”.

Passed the House of Representatives December 7,
2016.

Attest:

KAREN L. HAAS,
Clerk.