

TRANSPARENT INSURANCE STANDARDS ACT OF 2016

NOVEMBER 22, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 5143]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 5143) to provide greater transparency and congressional oversight of international insurance standards setting processes, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

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

SEC. 2. CONGRESSIONAL FINDINGS.

The Congress finds the following:

(1) The State-based system for insurance regulation in the United States has served American consumers well for more than 150 years and has fostered an open and competitive marketplace with a diversity of insurance products to the benefit of policyholders and consumers.

(2) Protecting policyholders by regulating to ensure an insurer’s ability to pay claims has been the hallmark of the successful United States system and should be the paramount objective of domestic prudential regulation and emerging international standards.

(3) United States officials participating in discussions or negotiations regarding international insurance standards shall support standards designed for the protection of policyholders.

(4) The Secretary of the Treasury shall seek advice and recommendations from a diverse group of outside experts in performing the duties and authorities

of the Secretary to coordinate Federal efforts and develop Federal policy on prudential aspects of international insurance matters.

(5) The draft of the Higher Loss Absorbency capital standard adopted in 2015 by the International Association of Insurance Supervisors, notwithstanding the concerns of U.S. parties to the International Association of Insurance Supervisors, unequally affects insurance products offered in the United States, an issue that must be addressed.

(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.

SEC. 3. OBJECTIVES FOR INTERNATIONAL INSURANCE STANDARDS.

The objectives of the United States regarding international insurance standards are as follows:

(1) To ensure standards that maintain strong protection of policy holders, as reflected in the United States solvency regime.

(2) To ensure, pursuant to enactment of the Insurance Capital Standards Clarification Act of 2014 (Public Law 113–279), standards that are appropriate for insurers and are not bank-centric in nature.

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

(4) To consider the most efficient and least disruptive approaches to enhancing regulatory assessment of the capital adequacy of insurance groups, including tools that are already in place.

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

(6) To support increasing transparency at any global insurance or international standard-setting organization in which the United States participates, including advocating for greater stakeholder public observer access to working groups and committee meetings of the International Association of Insurance Supervisors.

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

(8) To ensure that the Secretary of the Treasury and the Board of Governors of the Federal Reserve System achieve consensus positions with State insurance commissioners when the Secretary and the Board are United States participants in discussions on insurance issues before the International Association of Insurance Supervisors, Financial Stability Board, or any other international forum of financial regulators or supervisors that considers such issues.

(9) To consider the impact of any such standard on the availability and cost of products to consumers.

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

(11) To ensure that the merits of existing State-based capital standards are recognized and incorporated in any domestic or global insurance capital standard.

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

SEC. 4. REQUIREMENTS FOR CONSENT TO ADOPT INTERNATIONAL INSURANCE STANDARDS.

(a) PUBLICATION OF STANDARDS; ADOPTION OF CAPITAL AND PRUDENTIAL STANDARDS.—The United States may not agree to, accept, establish, enter into, or consent to the adoption of a final international insurance standard with an international standard-setting organization or a foreign government, authority, or regulatory entity unless the requirements under both of the following paragraphs are complied with:

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

(A) BY FEDERAL RESERVE AND TREASURY.—The Chairman of the Board of Governors of the Federal Reserve System and the Secretary of the Treasury have caused the proposed text of the proposed final international insurance standard to be published in the Federal Register and made available for public comment for a period of not fewer than 30 days (which period may run concurrently with the 90-day period referred to in subsection (b)(3)).

(B) BY STATE INSURANCE COMMISSIONERS.—The State insurance commissioners have caused the proposed text of the proposed international insurance standard to be published in a similar form and manner that provides for notice and public comment.

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

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

(B) the Board has issued capital requirements for insurance companies supervised by the Board and subject to such requirements, which shall be issued through rulemaking in accordance with the procedures established under section 553 of title 5, United States Code, regarding substantive rules, under which the periods for notice and public comment shall each have a duration of not fewer than 60 days; and

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

(b) SUBMISSION AND LAYOVER PROVISIONS.—The Secretary and the Board may not agree to, accept, establish, enter into, or consent to the adoption of an international insurance standard established through an international standard-setting organization or a foreign government, authority, or regulatory entity unless—

(1) the Secretary and the Board have—

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

(B) submitted to the covered congressional committees, on a day on which both Houses of Congress are in session, a copy of the proposed final text of the proposed international insurance standard and the report required under subsection (c)(2) regarding such analysis;

(2) the Secretary and the Chairman of the Board have determined, pursuant to such analysis, that the proposed standard will not result in any change in State law;

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

(4) a period of 90 calendar days beginning on the date on which the copy of the proposed final text of the standard is submitted to the covered congressional committees under paragraph (1)(B) has expired, during which period the Congress may take action to approve or reject such final standard.

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

(1) IN GENERAL.—An analysis under this subsection of a proposed final international insurance standard shall be an analysis conducted by the Secretary and the Chairman of the Board of Governors of the Federal Reserve System, in consultation with the State insurance commissioners, of the impact of such standard on consumers and markets in the United States and whether any changes in State law will result from such final standard.

(2) REPORT.—Upon completion of an analysis under this subsection of a final international insurance standard, the Secretary and the Board shall submit a report on the results of the analysis to the covered congressional committees and the Comptroller General of the United States. The report shall include a statement setting forth the determination made pursuant to paragraph (1) regarding any changes in State law resulting from such final standard.

(3) NOTICE AND COMMENT.—

(A) NOTICE.—The Secretary and the Chairman of the Board of Governors of the Federal Reserve System shall provide notice before the date on which drafting the report is commenced and after the date on which the draft of the report is completed.

(B) OPPORTUNITY FOR COMMENT.—There shall be an opportunity for public comment for a period beginning on the date on which the report is submitted under paragraph (2) and ending on the date that is not fewer than 60 days after the date on which the report is submitted. Nothing in this subparagraph shall affect the authority of the Board to issue the rule referred to in subsection (a)(2).

(4) REVIEW BY COMPTROLLER GENERAL.—Upon submission of a report pursuant to paragraph (2) to the Comptroller General, the Comptroller General shall

review the report and shall submit a report to the Congress setting forth the conclusions of the Comptroller General's review.

(d) LIMITED EFFECT.—This section may not be construed to establish or expand any authority to implement an international insurance standard in the United States or for the United States or any representative of the Federal Government to adopt or enter into any international insurance standard.

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

SEC. 5. REPORTS.

(a) REPORTS AND TESTIMONY BY SECRETARY OF THE TREASURY AND CHAIR OF THE FEDERAL RESERVE.—The Secretary and the Chairman of the Board of Governors of the Federal Reserve System shall submit to the covered congressional committees an annual report and provide testimony, not less often than every 6 months, to the covered congressional committees on the efforts of the Secretary and the Chairman with the State insurance commissioners with respect to international insurance standard-setting organizations and international insurance standards, including—

(1) a description of the insurance standard-setting issues under discussion at international standard-setting bodies, including the Financial Stability Board and the International Association of Insurance Supervisors;

(2) a description of the effects that international insurance standards could have on consumers and insurance markets in the United States;

(3) a description of any position taken by the Secretary and the Board in international insurance discussions or on any international insurance standard;

(4) a description of the efforts by the Secretary and the Board to increase transparency and accountability at the Financial Stability Board with respect to insurance proposals and the International Association of Insurance Supervisors, including efforts to provide additional public access to working groups and committees of the International Association of Insurance Supervisors; and

(5) a description of how the Secretary and the Board are meeting the objectives set forth in section 3, or, if such objectives are not being met, an explanation of the reasons for not meeting such objectives.

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

(c) REPORT ON TRANSPARENCY.—Not later than 180 days after the date of enactment of this Act, the Chairman of the Board of Governors of the Federal Reserve System and the Secretary shall submit to the Congress a report and provide testimony to the Congress on the efforts of the Chairman and the Secretary pursuant to subsection (a)(4) of this section to increase transparency at meetings of the International Association of Insurance Supervisors.

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

(1) IN GENERAL.—Not later than one year after the date of enactment of this Act, the Comptroller General of the United States shall submit to the covered congressional committees a report, and provide testimony to such committees, identifying and analyzing the transparency and accountability of any organization acting as a designee of, or at the direction of, the head of a State insurance department on issues related to international insurance standards, which is not employed directly by the State.

(2) CONTENT.—The report and testimony required under this section shall include a description and analysis of—

(A) the role, involvement, or relationship, of any organization identified pursuant to paragraph (1), of, with, or to the State insurance departments' activities as authorized by, directed by, or otherwise referred to in this Act, including a description and analysis regarding such organization's participation in policy and decision-making deliberations and activities related to international insurance standards;

(B) any financial support provided by such organization to any State insurance department personnel in furtherance of their activities related to international insurance standards, the nature and amount of such support, and any understandings between the organization and the State regarding travel protocols and State laws governing State officials' receipt of, benefiting from, or being subsidized by, outside funds;

(C) the budget, including revenues and expenses, of any organization identified pursuant to paragraph (1) relating to participation in international insurance discussions on issues before, involving, or relating to the International Association of Insurance Supervisors, the Financial Stability Board, or any other international forum of financial regulators or super-

visors that considers such issues, and how the organization collects money to fund such activities;

(D) whether each such budget of such an organization is developed under a process comparable in its transparency and accountability to the process under which budgets are developed and appropriated for State departments of insurance and Federal executive branch regulatory agencies, including—

(i) an identification of any bodies 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 the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing and Urban Affairs of the Senate.

(3) INTERNATIONAL INSURANCE STANDARD.—The term “international insurance standard” means any international insurance supervisory standard developed by an international standards setting organization, or regulatory or supervisory forum, in which the United States participates, including the Common Framework for the Supervision of Internationally Active Insurance Groups, the Financial Stability Board, and the International Association of Insurance Supervisors.

(4) SECRETARY.—The term “Secretary” means the Secretary of the Treasury, or the Secretary's designee.

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

SEC. 7. TREATMENT OF COVERED AGREEMENTS.

Section 314 of title 31, United States Code is amended—

(1) in subsection (c)—

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

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

“(1) the Secretary of the Treasury and the United States Trade Representative have caused to be published in the Federal Register, and made available for public comment for a period of not fewer than 30 days (which period may run concurrently with the 90-day period for the covered agreement referred to in paragraph (3)), the proposed text of the covered agreement;”;

(2) by adding at the end the following new subsections:

“(d) CONSULTATION WITH STATE INSURANCE COMMISSIONERS.—In any negotiations regarding a contemplated covered agreement, the Secretary and the United States Trade Representative shall consult with and directly include State insurance commissioners.

“(e) PROHIBITION ON REGULATORY AUTHORITY.—In accordance with subsections (k) and (l) of section 313, a covered agreement shall not be used to establish or provide the Federal Insurance Office or the Treasury with any general supervisory or regulatory authority over the business of insurance or with the authority to participate in a supervisory college or similar process.

“(f) TREATMENT UNDER OTHER LAW.—A covered agreement shall not be considered an international insurance standard for purposes of the Transparent Insurance Standards Act of 2016 and shall not be subject to such Act.”.

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

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

“(3) DUTIES OF INDEPENDENT MEMBER.—To assist the Council with its responsibilities to monitor international insurance developments, advise Congress, and make recommendations, the Independent Member of the Council shall have the authority to—

“(A) regularly consult with international insurance supervisors and international financial stability counterparts;

“(B) consult with, advise, and assist the Secretary of the Treasury with respect to representing the Federal Government of the United States, as appropriate, in the International Association of Insurance Supervisors (including to become a non-voting member thereof), particularly on matters of systemic risk, and to consult with the Board of Governors of the Federal Reserve System and the States concerning such matters;

“(C) attend the Financial Stability Board of The Group of Twenty and join with other members from the United States, including on matters related to insurance and financial stability, and provide for the attendance and participation at such Board, on matters related to insurance and financial stability, of State insurance commissioners; and

“(D) attend, with the United States delegation, the Organization for Economic Cooperation and Development and observe and participate at the Insurance and Private Pensions Committee of such Organization on matters related to insurance and financial stability.”

SEC. 9. STATE INSURANCE REGULATOR INVOLVEMENT IN INTERNATIONAL STANDARD SETTING.

Parties representing the United States at the Financial Stability Board of the Group of Twenty on matters, and in meetings, related to insurance and financial stability shall consult with, and seek to include in such meetings, the State insurance commissioners.

SEC. 10. RULE OF CONSTRUCTION.

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

PURPOSE AND SUMMARY

H.R. 5143, the “Transparent Insurance Standards Act of 2016,” enhances Congress’s oversight of international deliberations relating to insurance standards. More specifically, the legislation establishes a series of requirements to be met before the Treasury Department or the Federal Reserve (Fed) may agree to, accept, establish, enter into or consent to the adoption of a final international insurance standard.

First, the Treasury and the Fed must publish in the Federal Register, any proposed final standard and allow for public comment. In so doing, the agencies must provide a joint analysis on the impact of the standard on consumers and U.S. insurance markets. Before agreeing to any international standard relating to capital, the Fed is required to first promulgate its domestic capital standard rule. H.R. 5143 imposes similar requirements for negotiations concerning covered agreements. The legislation sets negotiating objectives for U.S. parties and also mandates that the Secretary of the Treasury and the Chairman of the Board of Governors of the Fed report and testify to Congress twice annually. Finally, H.R. 5143 helps to ensure that the Financial Stability Oversight Council’s (FSOC) Independent Member with Insurance Expertise is permitted to assist the FSOC in international discussions and attend meetings of international bodies where insurance standards are discussed.

BACKGROUND AND NEED FOR LEGISLATION

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 Treasury and charged the director of the FIO with representing the interests of U.S. insurers during the negotiation of international agreements and advising the Office of the U.S. Trade Representative (USTR) during trade negotiations.

The Dodd-Frank Act brought insurers, insurance holding companies, and insurance subsidiaries within the purview of the newly created FSOC, a 15-member inter-agency group charged with identifying risks to the financial stability of the United States. The Dodd-Frank Act requires that three of the FSOC's members represent the perspective of the insurance industry. The Dodd-Frank Act also grants the Fed regulatory authority over non-bank institutions designated by the FSOC as systemically important and transferred to the Fed supervisory responsibility for savings and loan holding companies, a group that includes numerous U.S.-domiciled insurers. It is this authority that provides for the imposition of a capital standard on domestic insurance companies, currently being discussed at the Fed. Even though 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.

H.R. 5143 addresses concerns that international negotiations should be consistent with the intent of Congress on international issues to follow a more insurance centric approach for insurance issues, including collaborating with the state insurance regulators and seeking greater equivalent recognition of the U.S. insurance regulatory system internationally. Hence, H.R. 5143 would create a more formalized role for Congressional monitoring of international standards and agreements. The legislation would establish a series of requirements to be met before FIO, the Fed, or any other party to these international conversations could consent to the adoption of a final insurance standard. Moreover, similar standards would be set for negotiations on covered agreements, including the covered agreement currently being negotiated with the European Union.

H.R. 5143 also outlines a more robust role for the FSOC Independent Member with Insurance Expertise, strengthening U.S. negotiators and its ability to advocate for the policies that suit U.S. insurance markets and consumers.

H.R. 5143 will provide for greater transparency, allow for a stronger U.S. negotiation team, and indicate to foreign bodies that the United States will lead and not be led.

HEARINGS

The Committee on Financial Services' Subcommittee on Housing & Insurance held a hearing examining matters relating to H.R. 5143 on February 25, 2016.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on June 15 and 16, 2016 to consider the bill. An amendment in the nature of a substitute offered by Mr. Luetkemeyer was agreed to by voice vote. An amendment to the amendment in the nature of a substitute, offered by Mr. Royce, was agreed to by voice vote. An amendment to the amendment in the nature of a substitute, offered by Mr. Heck, was withdrawn. The Committee ordered H.R. 5143 to be reported favorably to the House as amended by a recorded vote of 34 yeas to 25 nays (recorded vote no. FC-115), a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the House as amended. The motion was agreed to by a recorded vote of 34 yeas to 25 nays (Record vote no. FC-115), a quorum being present.

Record vote no. FC-115

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Waters (CA)		X	
Mr. King (NY)	X			Mrs. Maloney (NY)		X	
Mr. Royce	X			Ms. Velázquez		X	
Mr. Lucas	X			Mr. Sherman	X		
Mr. Garrett	X			Mr. Meeks		X	
Mr. Neugebauer	X			Mr. Capuano		X	
Mr. McHenry	X			Mr. Hinojosa		X	
Mr. Pearce	X			Mr. Clay		X	
Mr. Posey	X			Mr. Lynch		X	
Mr. Fitzpatrick	X			Mr. David Scott (GA)		X	
Mr. Westmoreland	X			Mr. Al Green (TX)		X	
Mr. Luetkemeyer	X			Mr. Cleaver		X	
Mr. Huizenga (MI)	X			Ms. Moore		X	
Mr. Duffy	X			Mr. Ellison		X	
Mr. Hurt (VA)	X			Mr. Perlmutter		X	
Mr. Stivers	X			Mr. Himes		X	
Mr. Fincher				Mr. Carney		X	
Mr. Stutzman	X			Ms. Sewell (AL)		X	
Mr. Mulvaney	X			Mr. Foster		X	
Mr. Hultgren	X			Mr. Kildee		X	
Mr. Ross	X			Mr. Murphy (FL)		X	
Mr. Pittenger	X			Mr. Delaney		X	
Mrs. Wagner	X			Ms. Sinema		X	
Mr. Barr	X			Mrs. Beatty		X	
Mr. Rothfus	X			Mr. Heck (WA)		X	
Mr. Messer	X			Mr. Vargas		X	
Mr. Schweikert	X						
Mr. Guinta	X						
Mr. Tipton	X						
Mr. Williams	X						
Mr. Poliquin	X						
Mrs. Love	X						
Mr. Hill	X						
Mr. Emmer	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 5143 will provide for Congressional oversight of international negotiations concerning insurance matters by creating a more formalized role for such oversight.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 31, 2016.

Hon. JEB HENSARLING,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5143, the Transparent Insurance Standards Act of 2016.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 5143—Transparent Insurance Standards Act of 2016

H.R. 5143 would require the Department of the Treasury and the Federal Reserve to provide additional reports and testimony to the

Congress on international negotiations regarding regulatory standards in the insurance industry. Before agreeing to or adopting such standards, the bill would require that the Treasury and the Federal Reserve publish any proposed final standard, allow for public comment, and report to the Congress on the impact of those standards on U.S. consumers, markets, and state laws. The bill also would require the Federal Reserve to promulgate a rule on domestic capital standards before agreeing to any international standard related to capital standards for insurance firms. Finally, H.R. 5143 would require the Government Accountability Office (GAO) to review those reports on insurance regulations.

Based on information provided by the Federal Reserve, CBO estimates that enacting H.R. 5143 would increase costs to the Federal Reserve System for conducting the required analysis and for preparing reports and testimony. Those increased costs would reduce revenues paid to the Treasury by the Federal Reserve by \$7 million over the 2017–2026 period; therefore pay-as-you-go procedures apply. Those changes are shown in the following table. Enacting the bill would not affect direct spending.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 5143 AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON FINANCIAL SERVICES ON JUNE 16, 2016

	By fiscal year, in millions of dollars—														2016–2021	2016–2026
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026					
NET INCREASE IN THE DEFICIT																
Statutory Pay-As-You-Go Impact	0	0	1	1	1	1	1	1	1	1	1	1	3	7		

In addition, based on information from the Treasury and the cost of similar activities, CBO estimates that implementing H.R. 5143 would cost \$1 million in 2017 and less than \$500,000 in subsequent years for the GAO report and the reporting requirements related to international standards. Such spending would be subject to the availability of appropriated amounts.

CBO estimates that enacting H.R. 5143 would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2027.

H.R. 5143 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contacts for this estimate are Matthew Pickford (for federal costs) and Nathaniel Frentz (for revenues). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 5143 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee states that no provision of H.R. 5143 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 114th Cong. (2015), the Committee states that H.R. 5143 contains no directed rulemaking.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 5143 as the “Transparent Insurance Standards Act of 2016”.

Section 2. Congressional findings

This section sets forth Congressional findings concerning insurance regulatory matters.

Section 3. Objectives for international insurance standards

This section establishes 12 objectives of the United States regarding international insurance standards.

Section 4. Requirements for consent to adopt international insurance standards

This section prohibits the United States from agreeing to a final international insurance standard with an international standard-setting organization or foreign government or authority absent a public notice-and-comment period. Further, the United States may not agree to an international insurance standard adopting a capital standard unless (1) such standard is consistent with State-based capital requirements and (2) the Fed has issued capital requirements for insurance companies it supervises and the international standard is consistent with such Fed-issued requirements. Additionally, this section requires submission to Congress of a copy of the proposed final text of the international insurance standard together with a report on the standard’s impact on State-based insur-

ance regulation; certification that such standard will not result in any change in State law; and, with respect to an international standard proposing a capital standard, certification that the proposal is designed solely to help ensure that sufficient funds are available to pay claims to an insurer's policyholders in the event of the liquidation of that entity. Finally, this section provides that the above-described report must be subject to public notice and comment as well as review by the Comptroller General, and that the United States may not agree to an international insurance standard within 90 days of submitting the proposed text of the standard to Congress.

Section 5. Reports

This section requires the Treasury Secretary and the Fed Chairman to submit an annual report and testify at least every six months concerning efforts with state insurance commissioners with respect to international insurance standard-setting organizations and international insurance standards. This section also requires a report and congressional testimony on efforts by the Fed Chairman and Treasury Secretary to increase transparency at meetings of the International Association of Insurance Supervisors. Finally, this section requires that the Comptroller General report and testify concerning the transparency and accountability of outside organizations acting on behalf of the heads of State insurance departments on issues related to international insurance standards.

Section 6. Definitions

This section defines the terms "Board," "Covered Congressional Committees," "International Insurance Standard," "Secretary," and "State Insurance Commissioners."

Section 7. Treatment of covered agreements

This section establishes public notice and comment requirements for covered agreements; requires that the Treasury Secretary and USTR consult with and directly include State insurance commissioners in negotiations regarding a contemplated covered agreement; prohibits such an agreement from being used to establish or provide FIO or Treasury with general supervisory or regulatory authority over the business of insurance or with the authority to participate in a supervisory college or similar process; and provides that a covered agreement shall not be considered an international insurance standard for purposes of the Transparent Insurance Standards Act of 2016.

Section 8. Duties of independent member of Financial Stability Oversight Council

This section provides the Independent Member with authority to, among other things, consult with international insurance supervisors and international financial stability counterparts; assist in the representation of the United States in the International Association of Insurance Supervisors; and attend and participate in insurance and financial stability matters before the Financial Stability Board of The Group of Twenty and the Organization for Economic Cooperation and Development.

Section 9. State insurance regulator involvement in international standard setting

This section requires that parties representing the United States in international for a relating to insurance and financial stability consult with and seek to include in such meetings the State insurance commissioners.

Section 10. Rule of construction

This section provides that nothing in this Act or its amendments supports or endorses the domestic capital standard for insurers referred to in section 4(a)(2) or any such domestic capital standards established by the Board.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 31, UNITED STATES CODE

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SUBTITLE I—GENERAL

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CHAPTER 3—DEPARTMENT OF THE TREASURY

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SUBCHAPTER I—ORGANIZATION

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§ 314. Covered agreements

(a) **AUTHORITY.**—The Secretary and the United States Trade Representative are authorized, jointly, to negotiate and enter into covered agreements on behalf of the United States.

(b) **REQUIREMENTS FOR CONSULTATION WITH CONGRESS.**—

(1) **IN GENERAL.**—Before initiating negotiations to enter into a covered agreement under subsection (a), during such negotiations, and before entering into any such agreement, the Secretary and the United States Trade Representative shall jointly consult with the Committee on Financial Services and the Committee on Ways and Means of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Finance of the Senate.

(2) **SCOPE.**—The consultation described in paragraph (1) shall include consultation with respect to—

(A) the nature of the agreement;

(B) how and to what extent the agreement will achieve the applicable purposes, policies, priorities, and objectives of section 313 and this section; and

(C) the implementation of the agreement, including the general effect of the agreement on existing State laws.

(c) SUBMISSION AND LAYOVER PROVISIONS.—A covered agreement under subsection (a) may enter into force with respect to the United States only if—

(1) the Secretary of the Treasury and the United States Trade Representative have caused to be published in the Federal Register, and made available for public comment for a period of not fewer than 30 days (which period may run concurrently with the 90-day period for the covered agreement referred to in paragraph (3)), the proposed text of the covered agreement;

[(1)] (2) the Secretary and the United States Trade Representative jointly submit to the congressional committees specified in subsection (b)(1), on a day on which both Houses of Congress are in session, a copy of the final legal text of the agreement; and

[(2)] (3) a period of 90 calendar days beginning on the date on which the copy of the final legal text of the agreement is submitted to the congressional committees under paragraph (1) has expired.

(d) CONSULTATION WITH STATE INSURANCE COMMISSIONERS.—In any negotiations regarding a contemplated covered agreement, the Secretary and the United States Trade Representative shall consult with and directly include State insurance commissioners.

(e) PROHIBITION ON REGULATORY AUTHORITY.—In accordance with subsections (k) and (l) of section 313, a covered agreement shall not be used to establish or provide the Federal Insurance Office or the Treasury with any general supervisory or regulatory authority over the business of insurance or with the authority to participate in a supervisory college or similar process.

(f) TREATMENT UNDER OTHER LAW.—A covered agreement shall not be considered an international insurance standard for purposes of the Transparent Insurance Standards Act of 2016 and shall not be subject to such Act.

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DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

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TITLE I—FINANCIAL STABILITY

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Subtitle A—Financial Stability Oversight Council

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SEC. 112. COUNCIL AUTHORITY.

(a) PURPOSES AND DUTIES OF THE COUNCIL.—

(1) IN GENERAL.—The purposes of the Council are—

(A) to identify risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace;

(B) to promote market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the Government will shield them from losses in the event of failure; and

(C) to respond to emerging threats to the stability of the United States financial system.

(2) DUTIES.—The Council shall, in accordance with this title—

(A) collect information from member agencies, other Federal and State financial regulatory agencies, the Federal Insurance Office and, if necessary to assess risks to the United States financial system, direct the Office of Financial Research to collect information from bank holding companies and nonbank financial companies;

(B) provide direction to, and request data and analyses from, the Office of Financial Research to support the work of the Council;

(C) monitor the financial services marketplace in order to identify potential threats to the financial stability of the United States;

(D) to monitor domestic and international financial regulatory proposals and developments, including insurance and accounting issues, and to advise Congress and make recommendations in such areas that will enhance the integrity, efficiency, competitiveness, and stability of the U.S. financial markets;

(E) facilitate information sharing and coordination among the member agencies and other Federal and State agencies regarding domestic financial services policy development, rulemaking, examinations, reporting requirements, and enforcement actions;

(F) recommend to the member agencies general supervisory priorities and principles reflecting the outcome of discussions among the member agencies;

(G) identify gaps in regulation that could pose risks to the financial stability of the United States;

(H) require supervision by the Board of Governors for nonbank financial companies that may pose risks to the financial stability of the United States in the event of their material financial distress or failure, or because of their activities pursuant to section 113;

(I) make recommendations to the Board of Governors concerning the establishment of heightened prudential standards for risk-based capital, leverage, liquidity, contingent capital, resolution plans and credit exposure reports, concentration limits, enhanced public disclosures, and overall risk management for nonbank financial companies and large, interconnected bank holding companies supervised by the Board of Governors;

(J) identify systemically important financial market utilities and payment, clearing, and settlement activities (as that term is defined in title VIII);

(K) make recommendations to primary financial regulatory agencies to apply new or heightened standards and safeguards for financial activities or practices that could create or increase risks of significant liquidity, credit, or other problems spreading among bank holding companies, nonbank financial companies, and United States financial markets;

(L) review and, as appropriate, may submit comments to the Commission and any standard-setting body with respect to an existing or proposed accounting principle, standard, or procedure;

(M) provide a forum for—

(i) discussion and analysis of emerging market developments and financial regulatory issues; and

(ii) resolution of jurisdictional disputes among the members of the Council; and

(N) annually report to and testify before Congress on—

(i) the activities of the Council;

(ii) significant financial market and regulatory developments, including insurance and accounting regulations and standards, along with an assessment of those developments on the stability of the financial system;

(iii) potential emerging threats to the financial stability of the United States;

(iv) all determinations made under section 113 or title VIII, and the basis for such determinations;

(v) all recommendations made under section 119 and the result of such recommendations; and

(vi) recommendations—

(I) to enhance the integrity, efficiency, competitiveness, and stability of United States financial markets;

(II) to promote market discipline; and

(III) to maintain investor confidence.

(3) *DUTIES OF INDEPENDENT MEMBER.*—*To assist the Council with its responsibilities to monitor international insurance developments, advise Congress, and make recommendations, the Independent Member of the Council shall have the authority to—*

(A) *regularly consult with international insurance supervisors and international financial stability counterparts;*

(B) *consult with, advise, and assist the Secretary of the Treasury with respect to representing the Federal Government of the United States, as appropriate, in the International Association of Insurance Supervisors (including to become a non-voting member thereof), particularly on matters of systemic risk, and to consult with the Board of Governors of the Federal Reserve System and the States concerning such matters;*

(C) *attend the Financial Stability Board of The Group of Twenty and join with other members from the United*

States, including on matters related to insurance and financial stability, and provide for the attendance and participation at such Board, on matters related to insurance and financial stability, of State insurance commissioners; and

(D) attend, with the United States delegation, the Organization for Economic Cooperation and Development and observe and participate at the Insurance and Private Pensions Committee of such Organization on matters related to insurance and financial stability.

(b) STATEMENTS BY VOTING MEMBERS OF THE COUNCIL.—At the time at which each report is submitted under subsection (a), each voting member of the Council shall—

(1) if such member believes that the Council, the Government, and the private sector are taking all reasonable steps to ensure financial stability and to mitigate systemic risk that would negatively affect the economy, submit a signed statement to Congress stating such belief; or

(2) if such member does not believe that all reasonable steps described under paragraph (1) are being taken, submit a signed statement to Congress stating what actions such member believes need to be taken in order to ensure that all reasonable steps described under paragraph (1) are taken.

(c) TESTIMONY BY THE CHAIRPERSON.—The Chairperson shall appear before the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate at an annual hearing, after the report is submitted under subsection (a)—

(1) to discuss the efforts, activities, objectives, and plans of the Council; and

(2) to discuss and answer questions concerning such report.

(d) AUTHORITY TO OBTAIN INFORMATION.—

(1) IN GENERAL.—The Council may receive, and may request the submission of, any data or information from the Office of Financial Research, member agencies, and the Federal Insurance Office, as necessary—

(A) to monitor the financial services marketplace to identify potential risks to the financial stability of the United States; or

(B) to otherwise carry out any of the provisions of this title.

(2) SUBMISSIONS BY THE OFFICE AND MEMBER AGENCIES.—Notwithstanding any other provision of law, the Office of Financial Research, any member agency, and the Federal Insurance Office, are authorized to submit information to the Council.

(3) FINANCIAL DATA COLLECTION.—

(A) IN GENERAL.—The Council, acting through the Office of Financial Research, may require the submission of periodic and other reports from any nonbank financial company or bank holding company for the purpose of assessing the extent to which a financial activity or financial market in which the nonbank financial company or bank holding company participates, or the nonbank financial company

or bank holding company itself, poses a threat to the financial stability of the United States.

(B) MITIGATION OF REPORT BURDEN.—Before requiring the submission of reports from any nonbank financial company or bank holding company that is regulated by a member agency or any primary financial regulatory agency, the Council, acting through the Office of Financial Research, shall coordinate with such agencies and shall, whenever possible, rely on information available from the Office of Financial Research or such agencies.

(C) MITIGATION IN CASE OF FOREIGN FINANCIAL COMPANIES.—Before requiring the submission of reports from a company that is a foreign nonbank financial company or foreign-based bank holding company, the Council shall, acting through the Office of Financial Research, to the extent appropriate, consult with the appropriate foreign regulator of such company and, whenever possible, rely on information already being collected by such foreign regulator, with English translation.

(4) BACK-UP EXAMINATION BY THE BOARD OF GOVERNORS.—If the Council is unable to determine whether the financial activities of a U.S. nonbank financial company pose a threat to the financial stability of the United States, based on information or reports obtained under paragraphs (1) and (3), discussions with management, and publicly available information, the Council may request the Board of Governors, and the Board of Governors is authorized, to conduct an examination of the U.S. nonbank financial company for the sole purpose of determining whether the nonbank financial company should be supervised by the Board of Governors for purposes of this title.

(5) CONFIDENTIALITY.—

(A) IN GENERAL.—The Council, the Office of Financial Research, and the other member agencies shall maintain the confidentiality of any data, information, and reports submitted under this title.

(B) RETENTION OF PRIVILEGE.—The submission of any nonpublicly available data or information under this subsection and subtitle B shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State court) to which the data or information is otherwise subject.

(C) FREEDOM OF INFORMATION ACT.—Section 552 of title 5, United States Code, including the exceptions thereunder, shall apply to any data or information submitted under this subsection and subtitle B.

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MINORITY VIEWS

H.R. 5143, the “Transparent Insurance Standards Act of 2016,” would prescribe strict negotiating objectives for United States representatives in international fora regarding international insurance standards, and would establish several new processes and reporting requirements to be completed before any standard could be agreed to. These requirements would add significant delays and limitations to the process for developing an international insurance capital standard, ultimately weakening the United States’ ability to negotiate effectively for standards that best accommodate our unique regulatory regime.

Following the 2008 financial crisis, and specifically after the near-collapse of American International Group, Inc. (AIG), the Wall Street Reform and Consumer Protection Act (Dodd-Frank) established a new supervisory and regulatory framework to examine financial stability for insurance companies both domestically and internationally. Dodd-Frank created the Federal Insurance Office (FIO), which is directed in part to “coordinate federal efforts and develop federal policy on prudential aspects of international insurance matters, including representing the United States, as appropriate, in the International Association of Insurance Supervisors (IAIS) and assisting the Secretary in negotiating covered agreements.” Dodd-Frank also expanded the scope of the Federal Reserve’s supervisory authority and it now serves as the consolidated supervisor of insurance holding companies that own federally chartered thrifts or banks, as well as non-bank systemically important financial institutions designated by the Financial Stability Oversight Council (FSOC).

FIO, the Federal Reserve, and state insurance commissioners are all actively engaged at the IAIS and they regularly coordinate with one another, ensuring that each aspect of the unique United States regulatory regime is adequately represented in any international negotiation. Despite their effective coordination and extensive work thus far to improve global insurance regulation, H.R. 5143 stops this work in its tracks and puts in place cumbersome and counter-productive requirements.

At best, H.R. 5143 is unnecessary because international insurance negotiations do not create binding U.S. law. Any such international agreement would only take effect domestically if regulations are promulgated by a federal or state regulator in accordance with U.S. law, including required notice and comment periods. At worst, H.R. 5143 is a harmful bill that includes requirements that are difficult if not impossible to achieve. For example, the bill requires the Treasury and Federal Reserve achieve “consensus positions” with state insurance regulators before any insurance-related negotiations or discussions with international regulators. Achieving a consensus position with more than 50 state commissioners is vir-

tually impossible to achieve, which is one of the reasons that Dodd-Frank tasked FIO with representing the United States internationally.

H.R. 5143 is also opposed by Americans for Financial Reform.

Because this legislation would tie the hands of U.S. representatives, and prevent them from effectively negotiating on international insurance matters, the Minority opposes H.R. 5143.

MAXINE WATERS.
GWEN MOORE.
AL GREEN.
KEITH ELLISON.
STEPHEN F. LYNCH.
WM. LACY CLAY.

