

FEDERAL INSURANCE OFFICE REFORM ACT OF 2018

NOVEMBER 2, 2018.—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. 3861]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 3861) to reform the Federal Insurance Office of the Department of the Treasury, 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 “Federal Insurance Office Reform Act of 2018”.

SEC. 2. REFORM OF FEDERAL INSURANCE OFFICE.

(a) IN GENERAL.—Section 313 of title 31, United States Code, is amended as follows:

(1) LEADERSHIP.—In the first sentence of subsection (b), by inserting before the period at the end the following: “after consultation with State insurance commissioners”.

(2) FUNCTIONS.—In subsection (c)(1)—

(A) in subparagraph (E), by striking “to coordinate” and all that follows through “United States” and inserting the following: “to coordinate Federal efforts, and to coordinate with the States, in developing Federal policy on prudential aspects of international insurance matters, including representing the Federal Government”;

(B) in subparagraph (F), by striking “to determine” and inserting “to assist the Secretary in determining”; and

(C) by striking subparagraph (G) and inserting the following:

“(G) to consult and work toward consensus with the States (including State insurance regulators) on matters of international importance; and”.

- (3) GATHERING OF INFORMATION.—In subsection (e)—
- (A) in paragraph (1)—
 - (i) in the matter preceding subparagraph (A), by striking “may—” and inserting “may enter into information-sharing agreements.”; and
 - (ii) by striking subparagraphs (A) through (D);
 - (B) by striking paragraphs (2), (3), (4), and (6); and
 - (C) by redesignating paragraph (5) as paragraph (2).
- (4) PREEMPTION OF STATE INSURANCE MEASURES.—In subsection (f), by striking “Director” each place such term appears and inserting “Secretary”.
- (5) CONSULTATION.—In subsection (i)—
- (A) by striking “to the extent the Director determines appropriate.”; and
 - (B) by inserting before the period at the end the following: “and shall seek to include in such meetings, State insurance commissioners, or at the option of the State insurance commissioners, designees acting at the direction of the State insurance commissioners, throughout the negotiations of a covered agreement”.
- (6) RETENTION OF EXISTING STATE REGULATORY AUTHORITY.—In subsection (k), by inserting before the period at the end the following: “or with the authority to participate in a supervisory college or similar regulatory process”.
- (7) REPEAL OF CERTAIN REPORTS REQUIREMENTS.—By striking subsections (o) and (p) and redesignating subsections (q) through (s) as subsections (o) through (q), respectively.
- (8) DEFINITION.—In subsection (p)(2), as so redesignated by paragraph (7)—
- (A) in subparagraph (A), by striking “and” at the end;
 - (B) in subparagraph (B), by striking the period at the end and inserting “; and”; and
 - (C) by adding at the end the following new subparagraph:
 - “(C) does not include new prudential requirements for United States insurers.”.
- (b) CONFORMING AMENDMENT.—Subparagraph (E) of section 313(c)(1) of title 31, United States Code, is amended by striking “subsection (r)” and inserting “subsection (p)”.

SEC. 3. TREATMENT OF TERRORISM RISK INSURANCE ACT.

This Act and the amendments made by this Act may not be construed to affect any responsibilities, duties, or authorities of the Secretary of the Treasury under the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note).

PURPOSE AND SUMMARY

On September 28, 2017, Representative Sean Duffy introduced H.R. 3861, the “Federal Insurance Office Reform Act of 2017”, which would streamline the operations of the Federal Insurance Office (FIO), within the U.S. Department of the Treasury (Treasury), eliminate duplicative duties performed by state insurance regulators and re-focus the FIO’s mission on the coordination between state insurance regulators and the federal government on issues of international importance.

As amended, H.R. 3861 eliminates FIO’s subpoena authority, and general authority, to collect information directly from insurers, eliminates the authority of FIO to study and issue reports, unless requested by Congress, eliminates the Treasury Department’s authority to assign new duties or authorities to the FIO, and clarifies that neither FIO nor the Treasury Department has the authority to participate in supervisory colleges. To improve the coordination of issues of international importance, the legislation requires the FIO to work towards consensus with the states about international matters. The legislation also directs FIO to seek to include state insurance commissioners in meetings throughout the negotiation of covered agreements with international bodies, and defines that a covered agreement shall not include new prudential requirements.

BACKGROUND AND NEED FOR LEGISLATION

The goal of H.R. 3861 is to: (1) streamline the Federal Insurance Office (FIO) by eliminating duplicative duties performed by state insurance regulators and (2) focus the office's mission on the coordination between state insurance regulators and the federal government on issues of international importance.

For nearly 150 years, the states have primarily regulated 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.

Title V of 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. Title V does not give the federal government a role in licensing or regulating the insurance industry in the United States. Title V of the Dodd-Frank Act did establish a Federal Insurance Office (FIO) at the Treasury Department and charged the FIO director 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 Subcommittee on Housing and Insurance received testimony on October 24, 2017 from Paul Ehlert, President of Germania Insurance and Chairman of the National Association of Mutual Insurance Companies, who noted, “the legislation moves the office under the Treasury Department's Office of International Affairs. This will help keep the mission focused on coordinating federal efforts and representing the U.S. market, insurers, and policyholders abroad rather than attempting to regulate the insurance industry here at home.”

The FIO's authority extends to all lines of insurance except health insurance, most long-term care insurance, and crop insurance. The Treasury Secretary has general rulemaking authority to implement the Federal Insurance Office and the Office has access to personnel and other resources of the Treasury available to the Treasury Secretary. Title V of the Dodd-Frank Act charges FIO with eight specific mandates: (1) monitoring all aspects of the insurance industry; (2) monitoring the extent to which underserved communities have access to affordable insurance; (3) making recommendations to the FSOC on insurance companies to be designated for heightened prudential standards and supervision by the Federal Reserve because of their size or interconnectedness; (4) assisting the Treasury Secretary in administering the Terrorism Risk Insurance Act (TRIA); (5) coordinating federal involvement and policymaking on international insurance matters, which includes representing the U.S. on the International Association of Insurance Supervisors (IAIS)—an international insurance standard-setting body—and in negotiations of international insurance agreements; (6) consulting with state insurance regulators on matters of national or international importance; (7) determining whether state

insurance laws that treat non-U.S. insurers less favorably than U.S. insurers are preempted by international agreements; and (8) other duties assigned by the Secretary of the Treasury.

There has been some concern, since the enactment of the Dodd-Frank Act, that FIO is not a unified voice on matters of insurance regulation. This lack of a cohesive voice also impacts FIO's ability to successfully advocate on behalf of the U.S. insurance business and the U.S. insurance regulatory structure. H.R. 3861 seeks to rectify this lack of a cohesive voice. Katharine L. Wade, Commissioner, Connecticut Insurance Department, testified that, "By making clear that FIO represents the Treasury Department and is responsible for coordinating federal agencies' international insurance policymaking, the legislation provides clear lines of demarcation and definition to the role of FIO internationally and domestically."

HEARINGS

The Committee on Financial Services, Subcommittee on Housing and Insurance, held a hearing examining matters relating to H.R. 3861 on October 24, 2017.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on June 7, 2018, and ordered H.R. 3861 to be reported favorably to the House AS AMENDED by a recorded vote of 36 yeas to 21 nays (Record vote no. FC-184), a quorum being present. Before the motion to report was offered, the Committee adopted an amendment in the nature of a substitute offered by Mr. Duffy by voice vote.

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 36 yeas to 21 nays (Record vote no. FC-184), a quorum being present.

Record vote no. FC-184

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Maxine Waters (CA)		X	
Mr. McHenry	X			Mrs. Carolyn B. Maloney (NY)		X	
Mr. King	X			Ms. Velázquez		X	
Mr. Royce (CA)		X		Mr. Sherman	X		
Mr. Lucas	X			Mr. Meeks		X	
Mr. Pearce	X			Mr. Capuano		X	
Mr. Posey	X			Mr. Clay		X	
Mr. Luetkemeyer	X			Mr. Lynch			
Mr. Huizenga	X			Mr. David Scott (GA)		X	
Mr. Duffy	X			Mr. Al Green (TX)		X	
Mr. Stivers	X			Mr. Cleaver		X	
Mr. Hultgren	X			Ms. Moore		X	
Mr. Ross	X			Mr. Ellison		X	
Mr. Pittenger	X			Mr. Perlmutter		X	
Mrs. Wagner	X			Mr. Himes		X	
Mr. Barr	X			Mr. Foster		X	
Mr. Rothfus	X			Mr. Kildee		X	
Mr. Messer	X			Mr. Delaney		X	
Mr. Tipton	X			Ms. Sinema	X		
Mr. Williams	X			Mrs. Beatty			
Mr. Poliquin	X			Mr. Heck	X		
Mrs. Love	X			Mr. Vargas			
Mr. Hill	X			Mr. Gottheimer		X	
Mr. Emmer	X			Mr. Gonzalez (TX)		X	
Mr. Zeldin	X			Mr. Crist		X	
Mr. Trott	X			Mr. Kihuen		X	
Mr. Loudermilk	X						
Mr. Mooney (WV)	X						
Mr. MacArthur	X						
Mr. Davidson	X						
Mr. Budd	X						
Mr. Kustoff (TN)	X						
Ms. Tenney	X						
Mr. Hollingsworth	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

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

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.

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, June 25, 2018.

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. 3861, the Federal Insurance Office Reform Act of 2017.

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,
Director.

Enclosure.

H.R. 3861—Federal Insurance Office Reform Act of 2017

H.R. 3861 would amend the duties of the Federal Insurance Office (FIO) within the Department of the Treasury to focus on international insurance markets and improving coordination with state insurance authorities and federal agencies. FIO's work plans already address those matters; consequently, CBO estimates that implementing this bill would have no significant effect on the office's operations or administrative costs.

Enacting H.R. 3861 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 3861 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 3861 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

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 the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95-220, as amended by Pub. L. No. 98-169).

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, (115th Congress), the following statement is made concerning directed rule makings: The Committee estimates that the bill requires no directed rule makings within the meaning of such section.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 3861 as the “Federal Insurance Office Reform Act of 2017.”

Section 2. Reform of Federal Insurance Office

The section instructs the Treasury Secretary to consult with state insurance commissioners on the appointment of the Director of the FIO.

It further eliminates the authority of the Director to determine whether State insurance measures are preempted by covered agreements and places that authority with the Treasury Secretary and instructs the FIO to work towards consensus with states regarding insurance matters of international importance.

The section also allows FIO to enter into information sharing agreements and eliminates the authority of FIO to subpoena data directly from the insurance industry. It eliminates authority of the FIO to issue reports not requested by Congress and eliminates subpoena authority given to the FIO.

Conforming language strikes “Director” and inserts “Secretary” to determine whether State insurance measures are preempted by covered agreements. The section further instructs the Director to seek inclusion of state insurance commissioners in meetings throughout negotiations of a covered agreement.

Finally, section 2 clarifies that the FIO or Treasury does not have authority to participate in supervisory colleges, eliminates reports from statute that have already been issued and defines that a covered agreement shall not include new prudential requirements.

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):

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

* * * * *

§ 313. Federal Insurance Office

(a) **ESTABLISHMENT.**—There is established within the Department of the Treasury the Federal Insurance Office.

(b) **LEADERSHIP.**—The Office shall be headed by a Director, who shall be appointed by the Secretary of the Treasury *after consultation with State insurance commissioners*. The position of Director shall be a career reserved position in the Senior Executive Service, as that position is defined under section 3132 of title 5, United States Code.

(c) **FUNCTIONS.**—

(1) **AUTHORITY PURSUANT TO DIRECTION OF SECRETARY.**—The Office, pursuant to the direction of the Secretary, shall have the authority—

(A) to monitor all aspects of the insurance industry, including identifying issues or gaps in the regulation of insurers that could contribute to a systemic crisis in the insurance industry or the United States financial system;

(B) to monitor the extent to which traditionally underserved communities and consumers, minorities (as such term is defined in section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note)), and low- and moderate-income persons have access to affordable insurance products regarding all lines of insurance, except health insurance;

(C) to recommend to the Financial Stability Oversight Council that it designate an insurer, including the affiliates of such insurer, as an entity subject to regulation as a nonbank financial company supervised by the Board of Governors pursuant to title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act;

(D) to assist the Secretary in administering the Terrorism Insurance Program established in the Department of the Treasury under the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note);

(E) **to coordinate Federal efforts and develop Federal policy on prudential aspects of international insurance matters, including representing the United States** *to coordinate Federal efforts, and to coordinate with the States, in developing Federal policy on prudential aspects of international insurance matters, including representing the Federal Government*, as appropriate, in the International Association of Insurance Supervisors (or a successor entity) and assisting the Secretary in negotiating covered agreements (as such term is defined in **subsection (r)** *subsection (p)*);

(F) **to determine** *to assist the Secretary in determining*, in accordance with subsection (f), whether State insurance measures are preempted by covered agreements;

[(G) to consult with the States (including State insurance regulators) regarding insurance matters of national importance and prudential insurance matters of international importance; and]

(G) to consult and work toward consensus with the States (including State insurance regulators) on matters of international importance; and

(H) to perform such other related duties and authorities as may be assigned to the Office by the Secretary.

(2) ADVISORY FUNCTIONS.—The Office shall advise the Secretary on major domestic and prudential international insurance policy issues.

(3) ADVISORY CAPACITY ON COUNCIL.—The Director shall serve in an advisory capacity on the Financial Stability Oversight Council established under the Financial Stability Act of 2010.

(d) SCOPE.—The authority of the Office shall extend to all lines of insurance except—

(1) health insurance, as determined by the Secretary in coordination with the Secretary of Health and Human Services based on section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91);

(2) long-term care insurance, except long-term care insurance that is included with life or annuity insurance components, as determined by the Secretary in coordination with the Secretary of Health and Human Services, and in the case of long-term care insurance that is included with such components, the Secretary shall coordinate with the Secretary of Health and Human Services in performing the functions of the Office; and

(3) crop insurance, as established by the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

(e) GATHERING OF INFORMATION.—

(1) IN GENERAL.—In carrying out the functions required under subsection (c), the Office [may—] *may enter into information-sharing agreements.*

[(A) receive and collect data and information on and from the insurance industry and insurers;

[(B) enter into information-sharing agreements;

[(C) analyze and disseminate data and information; and

[(D) issue reports regarding all lines of insurance except health insurance.]

[(2) COLLECTION OF INFORMATION FROM INSURERS AND AFFILIATES.—

[(A) IN GENERAL.—Except as provided in paragraph (3), the Office may require an insurer, or any affiliate of an insurer, to submit such data or information as the Office may reasonably require in carrying out the functions described under subsection (c).

[(B) RULE OF CONSTRUCTION.—Notwithstanding any other provision of this section, for purposes of subparagraph (A), the term “insurer” means any entity that writes insurance or reinsures risks and issues contracts or policies in 1 or more States.

[(3) EXCEPTION FOR SMALL INSURERS.—Paragraph (2) shall not apply with respect to any insurer or affiliate thereof that

meets a minimum size threshold that the Office may establish, whether by order or rule.

[(4) ADVANCE COORDINATION.—Before collecting any data or information under paragraph (2) from an insurer, or affiliate of an insurer, the Office shall coordinate with each relevant Federal agency and State insurance regulator (or other relevant Federal or State regulatory agency, if any, in the case of an affiliate of an insurer) and any publicly available sources to determine if the information to be collected is available from, and may be obtained in a timely manner by, such Federal agency or State insurance regulator, individually or collectively, other regulatory agency, or publicly available sources. If the Director determines that such data or information is available, and may be obtained in a timely manner, from such an agency, regulator, regulatory agency, or source, the Director shall obtain the data or information from such agency, regulator, regulatory agency, or source. If the Director determines that such data or information is not so available, the Director may collect such data or information from an insurer (or affiliate) only if the Director complies with the requirements of subchapter I of chapter 35 of title 44, United States Code (relating to Federal information policy; commonly known as the Paperwork Reduction Act), in collecting such data or information. Notwithstanding any other provision of law, each such relevant Federal agency and State insurance regulator or other Federal or State regulatory agency is authorized to provide to the Office such data or information.]

[(5)] (2) CONFIDENTIALITY.—

(A) RETENTION OF PRIVILEGE.—The submission of any nonpublicly available data and information to the Office under this subsection 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.

(B) CONTINUED APPLICATION OF PRIOR CONFIDENTIALITY AGREEMENTS.—Any requirement under Federal or State law to the extent otherwise applicable, or any requirement pursuant to a written agreement in effect between the original source of any nonpublicly available data or information and the source of such data or information to the Office, regarding the privacy or confidentiality of any data or information in the possession of the source to the Office, shall continue to apply to such data or information after the data or information has been provided pursuant to this subsection to the Office.

(C) INFORMATION-SHARING AGREEMENT.—Any data or information obtained by the Office may be made available to State insurance regulators, individually or collectively, through an information-sharing agreement that—

- (i) shall comply with applicable Federal law; and
- (ii) shall not constitute a waiver of, or otherwise affect, any privilege under Federal or State law (including the rules of any Federal or State court) to which the data or information is otherwise subject.

(D) AGENCY DISCLOSURE REQUIREMENTS.—Section 552 of title 5, United States Code, shall apply to any data or information submitted to the Office by an insurer or an affiliate of an insurer.

[(6) SUBPOENAS AND ENFORCEMENT.—The Director shall have the power to require by subpoena the production of the data or information requested under paragraph (2), but only upon a written finding by the Director that such data or information is required to carry out the functions described under subsection (c) and that the Office has coordinated with such regulator or agency as required under paragraph (4). Subpoenas shall bear the signature of the Director and shall be served by any person or class of persons designated by the Director for that purpose. In the case of contumacy or failure to obey a subpoena, the subpoena shall be enforceable by order of any appropriate district court of the United States. Any failure to obey the order of the court may be punished by the court as a contempt of court.]

(f) PREEMPTION OF STATE INSURANCE MEASURES.—

(1) STANDARD.—A State insurance measure shall be preempted pursuant to this section or section 314 if, and only to the extent that the [Director] *Secretary* determines, in accordance with this subsection, that the measure—

(A) results 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; and

(B) is inconsistent with a covered agreement.

(2) DETERMINATION.—

(A) NOTICE OF POTENTIAL INCONSISTENCY.—Before making any determination under paragraph (1), the [Director] *Secretary* shall—

(i) notify and consult with the appropriate State regarding any potential inconsistency or preemption;

(ii) notify and consult with the United States Trade Representative regarding any potential inconsistency or preemption;

(iii) cause to be published in the Federal Register notice of the issue regarding the potential inconsistency or preemption, including a description of each State insurance measure at issue and any applicable covered agreement;

(iv) provide interested parties a reasonable opportunity to submit written comments to the Office; and

(v) consider any comments received.

(B) SCOPE OF REVIEW.—For purposes of this subsection, any determination of the [Director] *Secretary* regarding State insurance measures, and any preemption under paragraph (1) as a result of such determination, shall be limited to the subject matter contained within the covered agreement involved and shall achieve a level of protection for insurance or reinsurance consumers that is substantially equivalent to the level of protection achieved under State insurance or reinsurance regulation.

- (C) NOTICE OF DETERMINATION OF INCONSISTENCY.—Upon making any determination under paragraph (1), the **[Director]** *Secretary* shall—
- (i) notify the appropriate State of the determination and the extent of the inconsistency;
 - (ii) establish a reasonable period of time, which shall not be less than 30 days, before the determination shall become effective; and
 - (iii) notify the Committees on Financial Services and Ways and Means of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Finance of the Senate.
- (3) NOTICE OF EFFECTIVENESS.—Upon the conclusion of the period referred to in paragraph (2)(C)(ii), if the basis for such determination still exists, the determination shall become effective and the **[Director]** *Secretary* shall—
- (A) cause to be published a notice in the Federal Register that the preemption has become effective, as well as the effective date; and
 - (B) notify the appropriate State.
- (4) LIMITATION.—No State may enforce a State insurance measure to the extent that such measure has been preempted under this subsection.
- (g) APPLICABILITY OF ADMINISTRATIVE PROCEDURES ACT.—Determinations of inconsistency made pursuant to subsection (f)(2) shall be subject to the applicable provisions of subchapter II of chapter 5 of title 5, United States Code (relating to administrative procedure), and chapter 7 of such title (relating to judicial review), except that in any action for judicial review of a determination of inconsistency, the court shall determine the matter de novo.
- (h) REGULATIONS, POLICIES, AND PROCEDURES.—The Secretary may issue orders, regulations, policies, and procedures to implement this section.
- (i) CONSULTATION.—The Director shall consult with State insurance regulators, individually or collectively, **[to the extent the Director determines appropriate,]** in carrying out the functions of the Office *and shall seek to include in such meetings, State insurance commissioners, or at the option of the State insurance commissioners, designees acting at the direction of the State insurance commissioners, throughout the negotiations of a covered agreement.*
- (j) SAVINGS PROVISIONS.—Nothing in this section shall—
- (1) preempt—
 - (A) any State insurance measure that governs any insurer's rates, premiums, underwriting, or sales practices;
 - (B) any State coverage requirements for insurance;
 - (C) the application of the antitrust laws of any State to the business of insurance; or
 - (D) any State insurance measure governing the capital or solvency of an insurer, except to the extent that such State insurance measure results in less favorable treatment of a non-United State insurer than a United States insurer;
 - (2) be construed to alter, amend, or limit any provision of the Consumer Financial Protection Agency Act of 2010; or
 - (3) affect the preemption of any State insurance measure

otherwise inconsistent with and preempted by Federal law.

(k) **RETENTION OF EXISTING STATE REGULATORY AUTHORITY.**—Nothing in this section or section 314 shall be construed to establish or provide the Office or the Department of the Treasury with general supervisory or regulatory authority over the business of insurance *or with the authority to participate in a supervisory college or similar regulatory process.*

(l) **RETENTION OF AUTHORITY OF FEDERAL FINANCIAL REGULATORY AGENCIES.**—Nothing in this section or section 314 shall be construed to limit the authority of any Federal financial regulatory agency, including the authority to develop and coordinate policy, negotiate, and enter into agreements with foreign governments, authorities, regulators, and multinational regulatory committees and to preempt State measures to affect uniformity with international regulatory agreements.

(m) **RETENTION OF AUTHORITY OF UNITED STATES TRADE REPRESENTATIVE.**—Nothing in this section or section 314 shall be construed to affect the authority of the Office of the United States Trade Representative pursuant to section 141 of the Trade Act of 1974 (19 U.S.C. 2171) or any other provision of law, including authority over the development and coordination of United States international trade policy and the administration of the United States trade agreements program.

(n) **ANNUAL REPORTS TO CONGRESS.**—

(1) **SECTION 313(F) REPORTS.**—Beginning September 30, 2011, the Director shall submit a report on or before September 30 of each calendar year to the President and to the Committees on Financial Services and Ways and Means of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Finance of the Senate on any actions taken by the Office pursuant to subsection (f) (regarding preemption of inconsistent State insurance measures).

(2) **INSURANCE INDUSTRY.**—Beginning September 30, 2011, the Director shall submit a report on or before September 30 of each calendar year to the President and to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the insurance industry and any other information as deemed relevant by the Director or requested by such Committees.

[(o) REPORTS ON U.S. AND GLOBAL REINSURANCE MARKET.—The Director shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate—

[(1) a report received not later than September 30, 2012, describing the breadth and scope of the global reinsurance market and the critical role such market plays in supporting insurance in the United States; and

[(2) a report received not later than January 1, 2013, and updated not later than January 1, 2015, describing the impact of part II of the Nonadmitted and Reinsurance Reform Act of 2010 on the ability of State regulators to access reinsurance information for regulated companies in their jurisdictions.

[(p) STUDY AND REPORT ON REGULATION OF INSURANCE.—

[(1) IN GENERAL.—Not later than 18 months after the date of enactment of this section, the Director shall conduct a study and submit a report to Congress on how to modernize and improve the system of insurance regulation in the United States.

[(2) CONSIDERATIONS.—The study and report required under paragraph (1) shall be based on and guided by the following considerations:

[(A) Systemic risk regulation with respect to insurance.

[(B) Capital standards and the relationship between capital allocation and liabilities, including standards relating to liquidity and duration risk.

[(C) Consumer protection for insurance products and practices, including gaps in State regulation.

[(D) The degree of national uniformity of State insurance regulation.

[(E) The regulation of insurance companies and affiliates on a consolidated basis.

[(F) International coordination of insurance regulation.

[(3) ADDITIONAL FACTORS.—The study and report required under paragraph (1) shall also examine the following factors:

[(A) The costs and benefits of potential Federal regulation of insurance across various lines of insurance (except health insurance).

[(B) The feasibility of regulating only certain lines of insurance at the Federal level, while leaving other lines of insurance to be regulated at the State level.

[(C) The ability of any potential Federal regulation or Federal regulators to eliminate or minimize regulatory arbitrage.

[(D) The impact that developments in the regulation of insurance in foreign jurisdictions might have on the potential Federal regulation of insurance.

[(E) The ability of any potential Federal regulation or Federal regulator to provide robust consumer protection for policyholders.

[(F) The potential consequences of subjecting insurance companies to a Federal resolution authority, including the effects of any Federal resolution authority—

[(i) on the operation of State insurance guaranty fund systems, including the loss of guaranty fund coverage if an insurance company is subject to a Federal resolution authority;

[(ii) on policyholder protection, including the loss of the priority status of policyholder claims over other unsecured general creditor claims;

[(iii) in the case of life insurance companies, on the loss of the special status of separate account assets and separate account liabilities; and

[(iv) on the international competitiveness of insurance companies.

[(G) Such other factors as the Director determines necessary or appropriate, consistent with the principles set forth in paragraph (2).

[(4) REQUIRED RECOMMENDATIONS.—The study and report required under paragraph (1) shall also contain any legislative,

administrative, or regulatory recommendations, as the Director determines appropriate, to carry out or effectuate the findings set forth in such report.

[(5) CONSULTATION.—With respect to the study and report required under paragraph (1), the Director shall consult with the State insurance regulators, consumer organizations, representatives of the insurance industry and policyholders, and other organizations and experts, as appropriate.]

[(q) (o) USE OF EXISTING RESOURCES.—To carry out this section, the Office may employ personnel, facilities, and any other resource of the Department of the Treasury available to the Secretary and the Secretary shall dedicate specific personnel to the Office.

[(r) (p) DEFINITIONS.—In this section and section 314, the following definitions shall apply:

(1) AFFILIATE.—The term “affiliate” means, with respect to an insurer, any person who controls, is controlled by, or is under common control with the insurer.

(2) COVERED AGREEMENT.—The term “covered agreement” means a written bilateral or multilateral agreement regarding prudential measures with respect to the business of insurance or reinsurance that—

(A) is entered into between the United States and one or more foreign governments, authorities, or regulatory entities; [and]

(B) relates to the recognition of prudential measures with respect to the business of insurance or reinsurance that achieves a level of protection for insurance or reinsurance consumers that is substantially equivalent to the level of protection achieved under State insurance or reinsurance regulation[.]; and

(C) does not include new prudential requirements for United States insurers.

(3) INSURER.—The term “insurer” means any person engaged in the business of insurance, including reinsurance.

(4) FEDERAL FINANCIAL REGULATORY AGENCY.—The term “Federal financial regulatory agency” means the Department of the Treasury, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, or the National Credit Union Administration.

(5) NON-UNITED STATES INSURER.—The term “non-United States insurer” means an insurer that is organized under the laws of a jurisdiction other than a State, but does not include any United States branch of such an insurer.

(6) OFFICE.—The term “Office” means the Federal Insurance Office established by this section.

(7) STATE INSURANCE MEASURE.—The term “State insurance measure” means any State law, regulation, administrative ruling, bulletin, guideline, or practice relating to or affecting prudential measures applicable to insurance or reinsurance.

(8) STATE INSURANCE REGULATOR.—The term “State insurance regulator” means any State regulatory authority responsible for the supervision of insurers.

(9) SUBSTANTIALLY EQUIVALENT TO THE LEVEL OF PROTECTION ACHIEVED.—The term “substantially equivalent to the level of protection achieved” means the prudential measures of a foreign government, authority, or regulatory entity achieve a similar outcome in consumer protection as the outcome achieved under State insurance or reinsurance regulation.

(10) UNITED STATES INSURER.—The term “United States insurer” means—

(A) an insurer that is organized under the laws of a State; or

(B) a United States branch of a non-United States insurer.

[(s)] (q) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the Office for each fiscal year such sums as may be necessary.

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MINORITY VIEWS

H.R. 3861 would make several changes to the authorities of the Federal Insurance Office (FIO). Following the 2007–2009 financial crisis, and specifically after the near-collapse of AIG, it became clear that although the state-based system of regulating the insurance industry has its strengths, there were significant gaps in oversight with regard to systemic risks that insurance companies can pose. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) expanded the federal role for insurance regulation by creating a new supervisory and regulatory framework to examine insurance companies both domestically and internationally for risks to U.S. financial stability.

With these and other concerns about increasing coordination on insurance matters in mind, FIO was created under Title V of Dodd-Frank. Although not a regulator, FIO was designed to play an important role in both domestic and international insurance issues through monitoring, data collection, and leadership in the coordination of the United States' efforts abroad. Unfortunately, H.R. 3861 would repeal or otherwise weaken many of FIO's authorities.

First, the bill eliminates FIO's authority to receive and collect data on and from the insurance industry, including its subpoena authority, as well as its ability to analyze and disseminate data and information. The elimination of this authority could have far reaching consequences, including harmful impacts on the federal government's ability to respond to terror attacks. Specifically, FIO is tasked with assisting the Treasury Secretary in administering the Terrorism Risk Insurance Program—a program created in the aftermath of the September 11, 2001 terrorist attacks to enable communities to better recover following a terrorist attack. FIO is also the only entity with the authority to subpoena the insurance industry for data necessary to meet the requirements of the Terrorism Risk Insurance Act (TRIA). By repealing the subpoena authority and all of FIO's data collection authorities, the federal government's response to terrorism under TRIA could be seriously hampered. Furthermore, FIO is tasked with monitoring the extent to which traditionally underserved communities and consumers, minorities and low- and moderate-income persons have access to affordable insurance products. This important responsibility is impossible to successfully implement without FIO's data collection tools. FIO has never used its subpoena authority, but its power to collect data is critical to its functions.

Second, the bill would significantly weaken FIO's authority to negotiate agreements internationally by: (1) revising its authority to only represent the interests of the Federal Government rather than the United States as a whole, which is its current role; (2) transferring FIO's role to make preemption determinations to the Treasury Secretary; and (3) stipulating that covered agreements negotiated

by FIO cannot include new prudential requirements for U.S. insurers. Taken together, these changes severely weaken the U.S. position internationally on international insurance matters, including covered agreements.

Third, the bill places cumbersome consultation and consensus requirements on FIO with regard to state involvement by: (1) requiring the Secretary of Treasury to consult with State insurance commissioners before appointing the Director of FIO; (2) redefining FIO's role in coordinating international insurance policy as including the goal of achieving consensus with the States; and (3) requiring the Director of FIO to seek to include state insurance commissioners or their designees (the NAIC) in meetings throughout the negotiations of a covered agreement. Although the requirements to reach consensus with the States and ensure their participation in meetings are aspirational rather than mandatory, it is unclear whether the language addresses constitutional concerns raised by the Department of Justice on a similar matter.

Democrats strongly support the existing state-based system for insurance regulation. However, H.R. 3861 would harm our domestic and international interests. For all these reasons, we oppose H.R. 3861.

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