

TITLE V—OFFICE OF NATIONAL INSURANCE

SEC. 501. SHORT TITLE.

This title may be cited as the “Office of National Insurance Act of 2009”.

SEC. 502. OFFICE OF NATIONAL INSURANCE ESTABLISHED.

(a) ESTABLISHMENT OF OFFICE.—Subchapter I of chapter 3 of title 31, United States Code, is amended—

- (1) by transferring and inserting section 312 after section 313;
- (2) by redesignating sections 313 and 312 (as so transferred) as sections 312 and 315, respectively; and

(3) by inserting after section 312 (as so redesignated) the following new sections:

“SEC. 313. OFFICE OF NATIONAL INSURANCE.

“(a) ESTABLISHMENT.—There is established the Office of National Insurance as an office in the Department of the Treasury.

“(b) LEADERSHIP.—The Office shall be headed by a Director, who shall be appointed by the Secretary of the Treasury. The position of such Director shall be a career reserved position in the Senior Executive Service.

“(c) FUNCTIONS.—

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

“(A) to ~~monitor-review~~ 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 recommend to the Board of Governors of the Federal Reserve System that it designate an insurer, including its affiliates, as an entity subject to regulation as a Tier 1 financial holding company under Section 6 of the Bank Holding Company Act of 1956 (12 U.S.C. 1845);

“(C) 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);

“(D) to coordinate Federal efforts and ~~establish-develop~~ Federal policy on prudential aspects of international insurance matters, including ~~representing the United States as appropriate in working with~~ the International Association of Insurance Supervisors and assisting the Secretary in negotiating International Insurance Agreements on Prudential Measures;

“(E) to determine, in accordance with subsection (f), whether State insurance measures are preempted by International Insurance Agreements on Prudential Measures;

“(F) to consult with the States regarding insurance matters of national importance and prudential insurance matters of international importance; and

“(G) To perform such other related duties and authorities as may be assigned to it by the Secretary.

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

“(d) SCOPE.—The authority of the Office shall extend to all lines of insurance except health insurance, as determined by the Secretary based on section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91).

“(e) GATHERING OF INFORMATION.—

“(1) GENERAL.—In carrying out its functions under subsection (c), the Office may receive and collect data and information on and from the insurance industry and insurers, enter into information-sharing agreements, analyze and disseminate data and information, and issue reports regarding all lines of insurance except health insurance.

“(2) COLLECTION OF INFORMATION FROM INSURERS AND AFFILIATES.—Except as provided in paragraph (3), the Office may require an insurer, or affiliate of an insurer, to submit such data or information that the Office may reasonably require in carrying out its functions under subsection (c).

“(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 may be established by the Office 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 State insurance regulator (or other relevant Federal or State regulatory agency, if any, in the case of an affiliate of an insurer) to determine if the information to be collected is available from, or may be obtained in a timely manner by, such State insurance regulator, including through or from the National Association of Insurance Commissioners (NAIC), or other regulatory agency. Notwithstanding any other provision of law, each such relevant State insurance regulator or other Federal or State regulatory agency is authorized to provide to the Office such data or information.

“(5) CONFIDENTIALITY.—

“(A) The submission of any non-publicly 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) 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 non-publicly 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; ~~and~~

“(C) Any data or information obtained by the Office shall be available to State insurance regulators, including through the NAIC, upon request; and receipt of such data or information 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; and

“(CD) any data or information submitted by an insurer, or affiliate of an insurer, contained in or related to examination, operating, or condition

reports prepared by, or on behalf of, or for the use of a State insurance regulator or other Federal or State regulatory agency responsible for the insurer or affiliate's regulation or supervision shall be considered to be subject to 5 U.S.C. 552(b)(8).

“(6) SUBPOENAS AND ENFORCEMENT.—The ~~Office~~ Director shall have power to require by subpoena the production of the data or information requested under paragraph (2). 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 if, and only to the extent that the Director determines, in accordance with this subsection, that the measure—

“(A) ~~directly or indirectly~~ treats a non-United States insurer domiciled in a foreign jurisdiction that is subject to an International Insurance Agreement on Prudential Measures materially more or less favorably than it treats a United States insurer domiciled, licensed, admitted, or otherwise authorized in that State; and

“(B) is materially inconsistent with an International Insurance Agreement on Prudential Measures.

“(2) DETERMINATION.—

“(A) NOTICE OF POTENTIAL INCONSISTENCY.— Before making any determination of inconsistency, the Director shall—

“(i) 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 International Insurance Agreement on Prudential Measures;

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

“(iii) consider any comments received.

“(B) SCOPE OF REVIEW.—For purposes of this Section, the Director's evaluation of State regulatory measures shall be strictly limited to the specific subject matter of the prudential measures applicable to the business of insurance contained within the International Insurance Agreement on Prudential Measures

“(BC) NOTICE OF DETERMINATION OF INCONSISTENCY.—Upon making any determination of inconsistency, the Director shall

“(i) notify the appropriate State of the determination and the extent of the inconsistency; and

“(ii) establish a reasonable period of time of no less than 90 days before the determination shall become effective; and-

“(iii) notify the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate of the inconsistency.

“(D) STAY.—Notwithstanding any determination by the Director that an inconsistency referred to in paragraph (2)(C) exists, the Secretary shall stay preemption under this

subsection, before publication of notice of preemption under paragraph, if the Secretary determines, after consultation with the affected State insurance regulator, that—

“(i) maintaining the State insurance measure is necessary for prudential reasons, including for—

“(a) the protection of policyholders and policy claimants;

“(b) the maintenance of the safety, soundness, integrity or financial responsibility of any entity involved in the business of insurance or insurance operations; or

“(c) ensuring the integrity and stability of the United States financial system;

“(ii) preemption will result in any need to establish a supervisory or regulatory authority of the Office or the Secretary over any entity involved in the business of insurance or insurance operations in the United States; or

“(iii) preemption will result in a gap or void in financial or market conduct regulation of any entity involved in the business of insurance or insurance operations in the United States.

“(3) NOTICE OF EFFECTIVENESS.—Upon the conclusion of the period referred to in paragraph (2)(~~BC~~)(ii), if the basis for the determination of inconsistency still exists, the determination shall become effective and the Director shall—

“(i) cause to be published notice in the Federal Register that the preemption has become effective, as well as the effective date; and

“(ii) notify the appropriate State.

“(4) LIMITATION.—No State may enforce a State insurance measure to the extent that it has been preempted under this subsection.

“(g) APPLICABILITY OF ADMINISTRATIVE PROCEDURES ACT.—

Determinations of inconsistency pursuant to paragraph (2)(C) and of preemption pursuant to paragraph (2)(D) shall be subject to the applicable provisions of subchapter II of chapter 5 of 6 title 5, United States Code (relating to administrative procedure), and chapter 7 of such title (relating to judicial review).

“(gh) REGULATIONS, POLICIES, AND PROCEDURES.—The Secretary may issue orders, regulations, policies and procedures to implement this section.

“(hj) CONSULTATION.—The Director shall consult with State insurance regulators, ~~including through or with the NAIC to the extent the Director determines appropriate~~, in carrying out the functions of the Office.

“(i) SAVINGS PROVISIONS.—Nothing in this section shall—

“(1) preempt any State insurance measure that governs any insurer’s rates, premiums, underwriting or sales practices, or State coverage requirements for insurance, or to the application of the antitrust laws of any State to the business of insurance;

“(2) preempt any State insurance measure that governs the solvency, safety, soundness, integrity or financial responsibility of United States insurers or reinsurers;

“(23) be construed to alter, amend, or limit any provision of the Consumer Financial Protection Agency Act of 2009; or

“(34) affect the preemption of any State insurance measure otherwise inconsistent with and preempted by Federal law.

“(j) ANNUAL REPORT TO CONGRESS.—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, any actions taken by the office pursuant to subsection (f) (regarding preemption of inconsistent State insurance measures), and any other information as deemed relevant by the Director or as requested by such Committees.

“(k) USE OF EXISTING RESOURCES—To carry out this section, the Office may employ personnel, facilities, and other Department of the Treasury resources available to the Secretary.

“(m) RETENTION OF EXISTING REGULATORY AUTHORITY.—Nothing in this section may be construed to establish a supervisory or regulatory authority of the Office or the Department of the Treasury over the business of insurance.

“(h) DEFINITIONS—For purposes of this section and section 314, the following definitions shall apply:

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

“(2) DETERMINATION OF INCONSISTENCY.—The term ‘determination of inconsistency’ means a determination that a State insurance measure is preempted under subsection (f).

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

“(4) INTERNATIONAL INSURANCE AGREEMENT ON PRUDENTIAL MEASURES.—The term ‘International Insurance Agreement on Prudential Measures’ means a written bilateral or multilateral agreement entered into between the United States and a foreign government, authority, or regulatory entity after the date of enactment of the Office of National Insurance Act of 2009 that provides for recognition of prudential measures applicable to the business of insurance or reinsurance that—

“(A) adequately protect insurance consumers in the United States; and

“(B) are substantially equivalent to the regulation by the States of the comparable subject matter.

~~regarding prudential measures applicable to the business of insurance or reinsurance.~~

“(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 Office of National Insurance established by this section.

“(7) SECRETARY.—The term ‘Secretary’ means the Secretary of the Treasury.

“(8) STATE.—The term ‘State’ means any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

“(9) 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.

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

“(11) 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.

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

“SEC. 314 INTERNATIONAL INSURANCE AGREEMENTS ON PRUDENTIAL MEASURES.

~~“(a) PURPOSE.—It is the sense of the Congress that the insurance marketplace increasingly operates globally with many significant foreign participants. There is increasing tension in the current regulatory systems as the result of an absence of clear and settled means for governments to enter into agreements on prudential measures with respect to the business of insurance or reinsurance. This impairs the ability of domestic and foreign based companies to participate fully in each others’ markets.~~

“(ba) AUTHORITY.—The Secretary, in consultation with State insurance regulators, is authorized to negotiate and enter into International Insurance Agreements on Prudential Measures on behalf of the United States.”.

(b) DUTIES OF SECRETARY.—Section 321(a) of title 31, United States Code, is amended—

(1) in paragraph (7), by striking “and” at the end;

(2) in paragraph (8)(C), by striking the period at the end and inserting “; and”;

and

(3) by adding at the end the following new paragraph:

“(9) advise the President on major domestic and international prudential policy issues in connection with all lines of insurance except health insurance.”.

(c) CLERICAL AMENDMENT—The table of sections for subchapter I of chapter 3 of title 31, United States Code, is amended by striking the item relating to section 312 and inserting the following new items:

“Sec. 312. Terrorism and Financial Intelligence.

“Sec. 313. Office of National Insurance.

“Sec. 314. International Insurance Agreements on Prudential Measures.

“Sec. 315. Continuing in office.”.