

Rightsizing the Federal Role in Insurance

For nearly 150 years, the states have effectively regulated insurance; protecting consumers while working to streamline and tailor regulation that has helped foster the largest, most competitive insurance market in the world. Congress, in Dodd-Frank and in prior financial reform efforts before it, recognized the success of state regulation by largely deferring to it, but reshaped existing federal powers and created new authorities that impact the sector and its regulation. In the nearly seven years since the passage of Dodd Frank, it has become clear to us changes are needed to better respect the role and strength of the states in regulating insurance, to clarify those limited areas of federal involvement, and to eliminate redundant activity that weakens the effectiveness of our efforts as regulators at home and abroad.

Eliminate the Federal Insurance Office

1. FIO is an unnecessary federal entity that should be eliminated. The roles for which FIO could provide some value (e.g. housing federal insurance expertise, overseeing the Terrorism Risk Insurance Program, coordinating federal agencies as it relates to insurance), can be filled by the Treasury Department without a stand-alone office or agency – indeed, many of these functions were being addressed by Treasury before FIO’s creation. While insurance regulators agree that the Federal government should have access to insurance expertise, there is simply no need for a standalone office to conduct these functions with minimal supervision by more senior administration officials and under the imprimatur of its own authorizing statute.
2. FIO is not necessary as a standalone systemic risk monitor for the insurance sector. The Financial Stability Oversight Council was created to bring regulators together to share information about potential systemic risks within the financial system including those emanating from the insurance sector. Treasury is already represented on FSOC by the Secretary and indeed serves as the Chair. The FIO is not a regulator and does not have unique insights that state insurance regulators or others with insurance experience do not already have into the risks within the insurance sector. Any analysis that FIO is providing the FSOC could be provided by designated individuals within the Treasury Department’s other offices, the Federal Reserve, and state insurance regulators that are closest to their respective insurance markets.
3. FIO’s role in international insurance regulatory standard setting undermines regulators and is unnecessary. Prior to the establishment of FIO, certain insurance sector participants created a mythology that Treasury’s involvement in insurance regulatory standard setting was necessary for the U.S. to “speak with one voice” and to achieve better outcomes for U.S. insurers in those processes. More than six years removed from the passage of Dodd Frank, neither has occurred. The U.S. now has even more voices at the table than before Dodd Frank, and standards developed by the International Association of Insurance Supervisors (IAIS) continue to reflect a largely European approach to supervision despite the FIO holding several key leadership positions, including Chair of the Financial Stability and Technical Committee. Furthermore, FIO is not a regulator and does not represent regulators, so its significant involvement in regulatory standard setting undermines state regulator independence and authority. To the extent Treasury needs to engage internationally with foreign governments and entities on insurance matters, Treasury has an entire Office of International Affairs that is equipped to do so.
4. The Covered Agreement authority is unnecessary. One of FIO’s core authorities is its ability to negotiate so-called “Covered Agreements” that give it limited preemptive authority over states laws and regulations with limited congressional oversight. This “Covered Agreement” authority was created as a stand-alone authority largely to address concerns European politicians and (re)insurers had with US reinsurance collateral requirements, which are designed to protect policyholders. Since then, US insurance regulators have taken steps to reduce those collateral requirements obviating the need for a Covered Agreement. Some have advocated for its use in negotiating a mutual recognition agreement to address the disparate treatment of certain US insurance firms by the European Union. While Europe’s treatment of certain US insurers is troubling, allowing FIO to pursue Covered Agreements puts the power of dictating US regulatory policy in the hands of a non-regulator and foreign governments without sufficient congressional oversight. Mutual recognition can be achieved absent a Covered Agreement through the use of other vehicles.

5. FIO's information gathering authorities are redundant. Every state insurance department, supported by the NAIC, has comprehensive powers and tools to collect information and share that information with the federal government, as appropriate. Having a duplicative federal data collection authority creates unnecessary burdens and resource constraints for regulators and industry. Insurance regulators and the NAIC have always been responsive to requests from federal agencies for information that is necessary for the agency to carry out its functions.

Engage in Serious FSOC Reform to reduce actual rather than perceived systemic risks to the US financial system

1. Reform the FSOC Designation Process. Over the past six years, FSOC has designated three insurance firms (AIG, Prudential, and MetLife). These firms and their regulators have little understanding of the reasons for the designations or the steps needed to be taken to reduce their perceived risks to the financial system and become dedesignated. In fact, insurance regulatory representatives and the independent member with insurance expertise (the only two insurance experts independent from the Treasury Department) have called into question the analytical rigor of these designations and a US District Court Judge has overturned the MetLife designation, which is under appeal. Serious reform of FSOC's designation authority is necessary to ensure that the FSOC is focused on reducing systemic risks to the financial system, not just duplicating regulation. Such reforms should include, at bare minimum, giving more deference to the views of the primary regulators of firms as well as the ongoing regulation of such firms, eliminating gross speculation from the analysis underpinning the basis for non-bank designations, providing clarity as to the reasons for designation, providing for an "off-ramp" for designations, and allowing firms to submit "derisking" plans for review.
2. Provide state insurance regulators a vote on FSOC. FSOC is charged with monitoring systemic risk throughout the US financial system including the insurance sector. To ensure that the insurance perspective is adequately represented in discussions, state insurance regulators, as the primary functional regulators of the US insurance sector, should have a voting seat on FSOC just like the functional regulators of the other financial sectors.

Banking Regulators Should Focus on Banks not Insurance Companies

1. Federal Reserve supervision of Savings and Loan Holding Companies should focus on protecting the thrift. With respect to insurance holding companies with thrifts, the FRB shouldn't be regulating every subsidiary with umbrella supervision designed for large bank holding companies, but rather banking regulation should be proportional and focused on risks to the thrift or federal deposit insurance fund.