



FINANCIAL REGULATORY REFORMS UPDATE

Title V — Insurance

- **Federal Insurance Office.** The Act establishes the FIO within the Treasury Department.
 - The FIO shall be headed by the FIO Director who shall serve in an advisory capacity on the Oversight Counsel.
 - The FIO is authorized to perform functions including the following with respect to all lines of insurance (excluding health insurance, certain long-term care insurance and crop insurance): (1) monitoring the insurance industry; (2) recommending to the Oversight Counsel that certain insurers be subject to regulation as Designated Companies; (3) assisting in administering the Terrorism Insurance Program; and (4) coordinating Federal efforts and developing Federal policy on prudential aspects of international insurance matters, including the ability to preempt State laws that conflict with international insurance agreements between the United States and other foreign governments.
 - The FIO Director must submit to the President and to specified Congressional Committees reports regarding the following topics: (1) the modernization and improvement of U.S. insurance regulation; (2) the insurance industry and the global reinsurance market; (3) any action taken by the FIO regarding preemption of State law; and (4) the impact of the Nonadmitted and Reinsurance Reform Act of 2010.
- **Nonadmitted Insurers, Surplus Lines Insurance and Reinsurance.** The Act is intended to streamline the regulation of nonadmitted insurers and surplus lines insurance by providing exclusive regulatory authority to an insured's home State and promoting uniformity of requirements and standards among States. Additionally, the Act regulates certain reinsurance matters by prohibiting any State, other than the domiciliary State of the ceding company, from denying credit for reinsurance if the State of domicile of the ceding company is NAIC-accredited or has financial solvency requirements substantially similar to the NAIC accreditation requirements. The Act also delegates sole responsibility for the regulation of a reinsurer's financial solvency to such reinsurer's State of domicile, provided such State is NAIC-accredited or has financial solvency requirements substantially similar to the NAIC accreditation requirements.
- **Deadline Dates.**
 - Within 330 days following enactment, the NAIC may submit to certain Congressional Committees a report regarding any adopted procedures for allocation of premium taxes among the States.
 - Beginning September 30, 2011 and on or before September 30 of each subsequent calendar year, the FIO Director shall submit to the President and to certain Congressional Committees a report on the insurance

- industry and a report regarding any actions taken by the FIO regarding preemption of State law.
- Not later than 18 months post-enactment, the FIO Director shall submit to Congress a report and recommendations regarding how to modernize and improve U.S. insurance regulation.
 - Not later than September 30, 2012, the FIO Director shall submit to certain Congressional Committees a report regarding the global reinsurance market.
 - Not later than January 1, 2013, the FIO Director shall submit to certain Congressional Committees a report regarding the impact of the Nonadmitted and Reinsurance Reform Act of 2010. Such report shall be updated not later than January 1, 2015.
 - Not later than 30 months post-effective date, the U.S. Comptroller General shall submit to certain Congressional Committees a report on the nonadmitted insurance market.

Subtitle A — Federal Insurance Office Established (subtitle may be cited as the “Federal Insurance Office Act of 2010”)

- The Act establishes the Federal Insurance Office (the “FIO”) within the Treasury Department, headed by a director (the “FIO Director”) appointed by the Treasury Secretary.
- The FIO Director shall serve in an advisory capacity on the Oversight Council.
- The FIO is authorized to perform the following functions with respect to all lines of insurance (excluding health insurance, long-term care insurance (other than long-term care insurance included with life or annuity components) and crop insurance):
 - monitor the insurance industry, including identifying gaps in the regulation of insurers that could contribute to a systemic crisis in the insurance industry or in the U.S. financial system;
 - monitor the extent to which traditionally underserved communities and consumers, minorities and low and moderate-income persons have access to affordable insurance products;
 - recommend to the Oversight Council that any particular insurer be classified as a Designated Company subject to regulation and supervision by the Federal Reserve Board pursuant to Title I of the Act;
 - assist in administering the Terrorism Insurance Program;
 - coordinate Federal efforts and develop Federal policy on aspects of international insurance matters, including representing the United States in the International Association of Insurance Supervisors and assisting the Treasury Secretary in negotiating certain agreements between the United States and one or more foreign governments, authorities or regulatory entities regarding prudential measures with respect to the business of insurance or reinsurance (each such agreement, a “covered agreement”);
 - determine whether State insurance measures are preempted by covered agreements;
 - consult with States and State insurance regulators regarding insurance matters of national and international importance; and
 - advise the Treasury Secretary on major domestic and international insurance policy issues.
- Notwithstanding the establishment of the FIO, State insurance regulators will remain the primary regulatory authority over insurance. No optional Federal insurance charter is established. The Act specifically withholds from the FIO and the Treasury Department general supervisory or regulatory authority over the business of insurance.

- In connection with its performance of the functions listed above, the FIO may receive and collect data on and from the insurance industry for analysis and dissemination, and may require, by subpoena, an insurer meeting a minimum size threshold (to be established by the FIO) to submit such data to the FIO.
- The FIO may determine that a State insurance measure may be preempted if such measure: (1) results in less favorable treatment of a non-U.S. insurer than a U.S. insurer domiciled, licensed or otherwise admitted in the relevant State and (2) is inconsistent with a covered agreement.
- Certain reports must be submitted to specified Congressional Committees and to the President by the FIO Director. Specifically, the Act requires submission by the FIO Director to certain House and Senate Committees of: (1) a report and recommendations on how to modernize and improve the system of insurance regulation in the United States; (2) annual reports on the insurance industry and on any actions taken by the FIO regarding preemption of State law; (3) a report on the global reinsurance market and its role in supporting insurance in the United States.; and (4) a report, and an update of such report, describing the impact of the Nonadmitted and Reinsurance Reform Act of 2010 (See Subtitle B below).

Subtitle B — State-Based Insurance Reform (subtitle may be cited as the “Nonadmitted and Reinsurance Reform Act of 2010”)

Streamlining of Regulation of Nonadmitted Insurers

- The Act is intended to streamline the regulation of nonadmitted insurers and surplus lines insurance (which generally does not include certain workers’ compensation insurance) by providing exclusive regulatory authority to an insured’s home State and promoting uniformity of requirements and standards among States.
- Among other provisions, the Act specifically provides that:
 - where risks are located in multiple States, only the home State of an insured may require any premium tax payment for nonadmitted insurance; however, the States may establish procedures to allocate such premium taxes among relevant States;
 - only an insured’s home State may require a surplus lines broker to be licensed in order to sell, solicit or negotiate nonadmitted insurance with respect to such insured;
 - unless a State has adopted nationwide uniform requirements and procedures (to be developed in accordance with this Subtitle of the Act), a State may only impose eligibility requirements on nonadmitted insurers domiciled in a U.S. jurisdiction in conformance with the requirements set forth in the National Association of Insurance Commissioners (“NAIC”) Nonadmitted Insurance Model Act;
 - if a nonadmitted insurer domiciled outside the United States is listed on the NAIC Quarterly List of Alien Insurers, a State may not prohibit a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, such insurer; and
 - if certain specified and requested information is provided, a surplus lines broker seeking to procure or place nonadmitted insurance in a State for certain large commercial insureds shall not be required to satisfy any State requirement to make a due diligence search to determine whether coverage can be obtained from an admitted insurer.

Regulation of Certain Reinsurance Matters

- Where a ceding insurer's domiciliary State recognizes such credit for reinsurance and such State is NAIC-accredited or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, no other State may deny credit for reinsurance to the ceding insurer.
- Where a reinsurer's domiciliary State is NAIC-accredited or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, such State shall be solely responsible for regulating the financial solvency of the reinsurer. No other State may require the reinsurer to provide any additional financial information other than the information the reinsurer is required to file with its domiciliary State.

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