Insurance Regulation: Legislation in the 115th Congress

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September 20, 2017

Congressional Research Service
7-....
www.crs.gov
R44958

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

Insurance companies constitute a major segment of the U.S. financial services industry. The industry is often separated into two parts: (1) life and health insurance companies, which also often offer annuity products, and (2) property and casualty insurance companies, which include most other lines of insurance, such as homeowners insurance, automobile insurance, and various commercial lines of insurance purchased by businesses. Different lines of insurance present very different characteristics and risks. Life insurance typically is a longer-term proposition with contracts stretching over decades and insurance risks are relatively well defined in actuarial tables. Property and casualty insurances typically are shorter-term propositions with six-month or one-year contracts and have greater exposure to catastrophic risks.

Since 1868, the individual states have been the primary regulators of insurance with the National Association of Insurance Commissioners (NAIC) acting to coordinate state actions and collect national data. In accordance with the 1945 McCarran-Ferguson Act, the states have operated as the primary insurance regulators with congressional blessing, but they have also been subject to periodic congressional scrutiny. Immediately prior to the 2007-2009 financial crisis, congressional attention on insurance regulation focused on the inefficiencies in the state regulatory system. A major catalyst was the aftermath of the Gramm-Leach-Bliley Act of 1999 (GLBA; P.L. 106-102), which overhauled the regulatory structure for banks and securities firms, but left the insurance sector largely untouched.

The financial crisis refocused the debate surrounding insurance regulatory reform. Unlike many financial crises in the past, insurers played a large role in this crisis. In particular, the failure of the insurer American International Group (AIG) spotlighted sources of systemic risk that had gone unrecognized. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act; P.L. 111-203), enacted following the crisis, gave enhanced systemic risk regulatory authority to the Federal Reserve and to a newly created Financial Stability Oversight Council (FSOC). The Dodd-Frank Act also included measures affecting the states' oversight of surplus lines insurance and reinsurance and created a new Federal Insurance Office (FIO) within the Department of the Treasury.

Legislation before the 115th Congress addressing insurance regulatory issues includes the following:

- H.R. 10, Title XI, would merge and revamp the FIO and the independent insurance expert position on FSOC;
- S. 1463/H.R. 3110 would alter the term of the FSOC independent insurance expert;
- H.R. 3363 would add insurance claims adjusters to the National Association of Registered Agents and Brokers licensing structure created by Congress in P.L. 114-1; and
- S. 1360 would respond the development of international standards by the International Association of Insurance Supervisors (IAIS).

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Background

Insurance companies constitute a major segment of the U.S. financial services industry. The industry is often separated into two parts: *life and health insurance companies*, which also often offer annuity products, and *property and casualty insurance companies*, which include most other lines of insurance, such as homeowners insurance, automobile insurance, and various commercial lines of insurance purchased by businesses. In 2015, premiums for life and health companies totaled $593.7 billion with assets totaling $6.40 trillion, and premiums for property and casualty insurance companies totaled $518.4 billion with assets totaling $1.81 trillion.[1]

Different lines of insurance present very different characteristics and risks. Life insurance typically is a longer-term proposition with contracts stretching over decades and insurance risks that are relatively well defined in actuarial tables. Property and casualty insurances typically are shorter-term propositions with six-month or one-year contracts and have greater exposure to catastrophic risks. Health insurance has evolved in a very different direction, with many insurance companies heavily involved with health care delivery, including negotiating contracts with physicians and hospitals, and a regulatory system much more influenced by the federal government through Medicare, Medicaid, the Employee Retirement Income Security Act of 1974 (ERISA),[2] and the Patient Protection and Affordable Care Act (ACA).[3] This report concentrates primarily on the regulation of property and casualty and life insurances.[4]

Insurance companies, unlike banks and securities firms, have been chartered and regulated solely by the states for the past 150 years. Legal and legislative landmarks in the state-based insurance regulatory system have included Supreme Court decisions in 1868 (*Paul v. Virginia*)[5] and 1944 (*U.S. v. South-Eastern Underwriters Association*)[6] and federal legislation in 1945 (the McCarran-Ferguson Act).[7] The McCarran-Ferguson Act specifically preserved the states' authority to regulate and tax insurance and also granted a federal antitrust exemption to the insurance industry for "the business of insurance." There are no federal insurance regulators akin to those for securities firms or banks, such as the Securities and Exchange Commission (SEC) or the Office of the Comptroller of the Currency (OCC), respectively.

Each state government has a department or other entity charged with licensing and regulating insurance companies and those individuals and companies selling insurance products. States regulate the solvency of the companies and the content of insurance products as well as the market conduct of companies. Although each state sets its own laws and regulations for insurance, the National Association of Insurance Commissioners (NAIC) acts as a coordinating body that sets national standards through model laws and regulations. NAIC-adopted models, however, must be enacted by the states before having legal effect, which can be a lengthy and

[1] Premium amounts used are net premiums written and asset amounts are admitted assets from A.M. Best, *Statistical Study: U.S. Property/Casualty - 2015 Financial Results*, March 21, 2016, and A.M. Best, *Statistical Study: U.S. Life/Health - 2015 Financial Results*, March 13, 2016.

[2] P.L. 93-406; 88 Stat. 829.

[3] P.L. 111-148; 124 Stat. 119.

[4] For more information on health insurance, see CRS Report RL32237, *Health Insurance: A Primer*, by (name redac ted) and (name redacted) .

[5] *Paul v. Virginia*, 75 U.S. (8 Wall.) 168 (1868).

[6] *U.S. v. South-Eastern Underwriters Association*, 322 U.S. 533 (1944).

[7] Codified at 15 U.S.C. §1011 *et seq*.

uncertain process. The states have also developed a coordinated system for insurer resolution, including guaranty funds designed to protect policyholders in the event of insurer insolvency.

Since the passage of McCarran-Ferguson Act, both Congress and the federal courts have taken actions that have somewhat expanded the reach of the federal government into the insurance sphere.[8] The insurance industry has often been divided over the possibility of federal actions affecting insurance. The states typically, though not always, have resisted federal actions, arguing that the states are better positioned to regulate insurance and address consumer complaints and that states have engaged in concerted actions to address concerns raised at the federal level. The two large legislative overhauls of financial regulation in the past two decades, the Gramm-Leach-Bliley Act of 1999 (GLBA)[9] and the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[10] expanded the federal role in insurance, but the states continued as the primary regulators of insurance following these acts.

GLBA removed legal barriers between securities firms, banks, and insurers, allowing these firms to coexist under a financial holding company structure. Under the act, such a holding company was overseen by an umbrella regulator—the Federal Reserve for holding companies that included bank subsidiaries or the Office of Thrift Supervision (OTS) for holding companies with thrift or savings association subsidiaries. Within a holding company, GLBA established a system of functional regulation for the bank, thrift, securities, and insurance subsidiaries. This meant that insurance company subsidiaries within a bank or thrift holding company were functionally regulated by state insurance authorities, with limited oversight by the holding company's federal regulator.

The Dodd-Frank Act altered the post-GLBA regulatory structure, but left the basic functional regulatory paradigm largely the same. The act gave enhanced systemic risk regulatory authority to the Federal Reserve and to a newly created Financial Stability Oversight Council (FSOC), including some oversight authority over insurers. The act created a new Orderly Liquidation Authority (OLA), which potentially could result in the Federal Deposit Insurance Corporation (FDIC) overseeing the resolution of insurers.[11] The authority to oversee holding companies, including those with insurance subsidiaries, was consolidated in the Federal Reserve with additional capital requirements added. The Dodd-Frank Act also included measures affecting the states' oversight of surplus lines insurance and reinsurance and created a new Federal Insurance Office (FIO) within the Department of the Treasury.[12]

Legislation in the 115th Congress

Possible insurance regulatory issues before the 115th Congress include

- overseeing the implementation of, and possible amendments to, the Dodd-Frank Act, including specific legislation, such as H.R. 10, Title XI of which would merge and revamp the FIO, and the independent insurance expert position on

[8] For more information on court decisions, see CRS Report RL33683, *Courts Narrow McCarran-Ferguson Antitrust Exemption for "Business of Insurance": Viability of "State Action" Doctrine as an Alternative*, by (name redacted).

[9] P.L. 106-102; 113 Stat. 1338.

[10] P.L. 111-203; 124 Stat. 1376.

[11] This authority is limited and would only take effect if a state insurance regulator did not act to resolve a firm.

[12] For more information on the specific insurance provisions in the Dodd-Frank Act, see CRS Report R41372, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Insurance Provisions*, by (name redacted)

FSOC, and S. 1463/H.R. 3110, which would alter the term of the FSOC independent insurance expert;

- legislation that would narrowly reform the current regulatory system, such as H.R. 3363; and
- responding to international developments, such as the changes to the European Union's regulatory scheme known as Solvency II and the development of international standards by the International Association of Insurance Supervisors (IAIS), with oversight and specific legislation such as S. 1360.

The Financial CHOICE Act (H.R. 10)[13]

H.R. 10 was introduced by Representative Jeb Hensarling on April 26, 2017, reported (H.Rept. 115-153) by the House Financial Services Committee on May 25, 2017, and passed by the House by a vote of 233-186 on June 8, 2017. H.R. 10 would make a broad range of changes to the financial regulatory system, including some insurance-related regulations, although insurance regulation is not a primary focus of the bill.

Title X of H.R. 10 would amend the Dodd-Frank Act to merge Treasury's FIO and the FSOC's independent insurance expert position, creating the Office of Independent Insurance Advocate, a new independent bureau within Treasury. The Independent Insurance Advocate would be appointed by the President and confirmed by the Senate and an FSOC voting member. The office would take over many, but not all, of the FIO director's duties, including such changes as the advocate would have the authority to *observe* the insurance industry, rather than FIO's charge to *monitor* the insurance industry; would not be required to monitor the access of underserved communities to insurances, as FIO currently is; and would not have the authority to require the submission of data from the industry that FIO currently has. H.R. 10 would also add an additional public notice and comment period for any covered agreement.[14]

Section 115(a) of H.R. 10 would repeal the nonbank designation authority and the application of enhanced prudential requirements by the Federal Reserve.

Section 111(a) of H.R. 10 would repeal all of Dodd-Frank Title II, which created OLA, and replace it with a new chapter of the Bankruptcy Code for financial firms, but one that would not apply to insurers. Thus, any insurer failure would be resolved by the state resolution system.

International Insurance Capital Standards Accountability Act of 2017 (S. 1360)

S. 1360 was introduced by Senators Dean Heller and Jon Tester on June 14, 2017, and referred to the Senate Committee on Banking, Housing, and Urban Affairs. S. 1360 would create an "Insurance Policy Advisory Committee on International Capital Standards and Other Insurance Issues" at the Federal Reserve made up of 21 members with expertise on various aspects of insurance. It would require both an annual report and testimony from the Federal Reserve and the Department of the Treasury on the ongoing discussions at the IAIS through 2020. The Federal

[13] For more information, see CRS Report R44839, *The Financial CHOICE Act in the 115th Congress: Selected Policy Issues*, by (name redacted) et al.and CRS Insight IN10702, *Insurance and the Financial CHOICE Act (H.R.10)*, by (name redacted)

[14] For more information on covered agreements, see CRS Insight IN10648, *What is the Proposed U.S.-EU Insurance Covered Agreement?*, by (name redacted) and (name redacted)

Reserve and FIO would be required to complete a study and report, along with the opportunity for public comment and review by the Government Accountability Office (GAO), on the impact of international capital standards or other proposals prior to agreeing to such standards.

Financial Stability Oversight Council Insurance Member Continuity Act (S. 1463/H.R. 3110)

S. 1463 was introduced by Senator Mike Crapo on June 28, 2017; it was ordered to be reported favorably by the Senate Committee on Banking, Housing, and Urban Affairs on September 9, 2017. H.R. 3110 was introduced by Representative Randy Hultgren on June 29, 2017; it was reported by the House Committee on Financial Services (H.Rept. 115-293) on September 5, 2017. H.R. 3110 passed the House by a vote of 407-1 on September 5, 2018 and passed the Senate by unanimous consent on September 19, 2018.

S. 1463/H.R. 3110 would amend the Dodd-Frank Act's language creating an independent member with insurance expertise, who serves on the FSOC. Specifically, the bill would add language allowing the independent member to serve up to 18 months after the end of his or her 6-year term or until a successor is appointed and confirmed. The current independent member, S. Roy Woodall, was confirmed on September 26, 2011, and President Trump has not renominated him, nor nominated a successor.

Claims Licensing Advancement for Interstate Matters Act (CLAIM Act, H.R. 3363)

H.R. 3363 was introduced by Representative David Kustoff on July 24, 2017, and referred to the House Committee on Financial Services. This bill would preempt state laws requiring claims adjuster licensing and allow insurance claims adjusters to apply for membership in the National Association of Registered Agents and Brokers (NARAB; created in P.L. 114-1) and thus operate in multiple states under NARAB. This preemption would apply four years after enactment and only for states that do not enact laws allowing for uniformity and reciprocity in claims adjuster licensing. It would not apply to states that do not require a license for claims adjusting.

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