



House Hearing Addresses Proposed Federal Insurance Office

October 12, 2009-- Last week, the House Committee on Financial Services held a hearing at which one panel discussed the creation of a Federal Insurance Office ("FIO"), as called for in a draft Federal Insurance Office Act of 2009 (the "FIO Act"). The draft FIO Act was released on October 1st by Representative Paul Kanjorski, the Democratic chairman of the House Financial Services Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises. The FIO Act is similar to draft legislation that the Treasury Department published earlier this summer as an Obama administration proposal, as well as earlier legislation that Rep. Kanjorski had introduced.

Rep. Kanjorski, in his opening remarks, said that the FIO Act would rectify "the lack of expertise within the federal government regarding the insurance industry" that became evident "especially during the collapse of American International Group and last year's turmoil in the bond insurance markets." Rep. Kanjorski noted that the FIO Act would "promote stability in our insurance markets."

The FIO Act, which can be found [here](#), would create the FIO as an office within the Treasury Department. The FIO's authority would extend to all lines of insurance except health insurance. The FIO would be tasked with:

- Monitoring "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."
- Recommending when an insurer, including its affiliates, presents large enough systemic risks that it should be subject to regulation as a "Tier 1 financial holding company." (However, the decision whether to accept the FIO's recommendations on this point would rest with a systemic regulator, which the FIO Act presumes would be the Federal Reserve.)
- Assisting in the administration of the Terrorism Insurance Program.
- Coordinating Federal efforts on prudential aspects of international insurance matters, including establishing Federal policy and negotiating agreements.
- Consulting with states regarding insurance matters of national importance and prudential insurance matters of international importance.

In order to monitor the insurance industry, the FIO would be authorized to

gather 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." An insurer, or affiliate of an insurer, would be required to submit such data or information as the FIO may "reasonably require."

State insurance laws would continue to regulate the insurance industry, except that state laws would be preempted by federal law when the director of the FIO finds that a non-U.S. insurer is being treated (a) less favorably than a U.S. insurer and (b) in a way that is inconsistent with an international insurance agreement on prudential matters. Moreover, the FIO Act expressly does not preempt any state insurance measures governing an "insurer's rates, premiums, underwriting or sales practices, or state coverage requirements for insurance."

During last week's hearing, the witnesses expressed varying degrees of support for the creation of the FIO and its defined role in the FIO Act. Testimony was heard from Stephen Zielezienski, Senior Vice President and General Counsel for the American Insurance Association, David Atkinson, on behalf of the Reinsurance Association of America, Dennis Herchel, on behalf of the American Council of Life Insurers ("ACLI"), Janice Abraham, on behalf of the Property Casualty Insurers Association of America ("PCI"), Spencer Houldin, on behalf of the Independent Insurance Agents & Brokers of America, and Therese Vaughan, Chief Executive Officer of the National Association of Insurance Commissioners ("NAIC").

Mr. Atkinson strongly favored the authority given to the federal government to establish a federal policy on prudential aspects of international insurance matters, to enter into international insurance agreements on prudential matters, and to preempt state insurance measures that are inconsistent with such international agreements. Mr. Herchel said the ACLI favored even stronger legislation, strengthening the role of the FIO within the federal systemic risk regime. Mr. Herchel suggested giving the FIO "a role equivalent to that of federal functional regulators when it comes to dealing with the [Federal Reserve] Board on all aspects of systemic risk regulation." He emphasized, however, that the bill was ambiguous and should clarify that the FIO will not have "any general supervisory or regulatory authority over insurance companies."

Those who moderately supported the creation of the FIO raised questions whether the FIO would be used as a precursor to establishing a federal insurance regulator. Several noted the track record of state regulation and asserted that the FIO should not act as an insurance administrator but rather only as an information gatherer. There was also apprehension regarding the scope of provisions regarding data gathering.

Therese Vaughan also stated, on behalf of the NAIC, that the FIO would need to have a limited role in international agreements and systemic risk and leave solvency issues to the states. Janice Abraham said, "PCI supports responsible regulatory reforms that reflect principles of good insurance regulation," but "our members have concerns and questions about a greatly expanded federal insurance oversight office," because "[w]e're not broke, we

didn't cause the financial crisis, and we don't need a new federal oversight that may ultimately increase costs for consumers."

For additional information:

Jorden Burt has formed a special Task Force to monitor this and other proposals relating to reform of financial services regulation. To obtain additional information about particular proposals that might have an impact on the insurance or reinsurance industries, you may contact Roland Goss (rcg@jordenusa.com or (202) 965-8148). To obtain additional information about particular proposals that might have an impact on the investment adviser and fund industries you may contact Tom Lauerman (tcl@jordenusa.com or (202) 965-8156). Or you may contact any of Jorden Burt's other regulatory attorneys.

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