



## Federal Insurance Office Act Moves Forward in House

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December 8, 2009 - Last week, the Financial Services Committee of the House of Representatives unanimously approved H.R. 2609, the Federal Insurance Office Act (the "FIO Act") (available [here](#)). The FIO Act would create a Federal Insurance Office and was previously discussed in our October 12, 2009 Alert (available [here](#)). Subsequent to the Committee's approval last week, the FIO Act was incorporated, without change, as Title VI of The Wall Street Reform and Consumer Protection Act of 2009, which was introduced in the House as H.R. 4173. H.R. 4173 deals with numerous aspects of financial regulatory reform and is being considered by the full House this week.

Similar legislation that would create an Office of National Insurance was released by Senator Chris Dodd (the "ONI Act") as part of the draft Restoring American Financial Stability Act of 2009, which currently is under consideration in the Senate Committee on Banking, Housing and Urban Affairs. The ONI Act was discussed in our November 18, 2009 Alert (available [here](#)), which highlighted the key differences between the proposed FIO and ONI Acts. Revisions were made to the FIO Act prior to its approval by the House Committee, to eliminate a number of these differences. Specifically, the most recent versions of the FIO Act and the ONI Act both include:

- A requirement that the director of the national insurance office (*i.e.*, the FIO or the ONI, as the case may be) "notify and consult with" the relevant state before making a determination (an "Inconsistency Determination") that a state insurance measure treats a non-U.S. insurer (a) less favorably than a U.S. insurer and (b) in a way that is inconsistent with an international insurance agreement on prudential matters. (Under both Acts, an Inconsistency Determination can result in federal preemption of the state insurance measure in question.) The FIO Act, however, also contains additional factors that the FIO would be required to consider before making an Inconsistency Determination, which are not included in the ONI Act. These factors include (i) the protection of policyholders, (ii) the maintenance of the safety and soundness of entities involved in insurance, (iii) ensuring the integrity and stability of the U.S. financial system, and (iv) the avoidance of any gap or void in financial or market conduct regulation of the business of insurance in the U.S.
- A provision specifying that Inconsistency Determinations are subject to the Administrative Procedures Act and judicial review.

- A requirement that the national insurance office submit a report to Congress on "how to modernize and improve the system of insurance regulation in the United States." Under both the FIO Act and the ONI Act, the report is "required to be based on and guided by" the considerations discussed in our above-mentioned November 18, 2009 Alert.
- Language to the effect that the Act does not preempt any "state insurance measure governing the capital or solvency of an insurer."
- A statement that the creation of the national insurance office is not to be construed to establish general supervisory or regulatory authority over the business of insurance.
- A provision granting the national insurance office, through information sharing agreements, the authority to share any data or information it collects with state insurance regulators.

Notably, however the FIO Act would not grant subpoena power to the director of the national insurance office for data or information reasonably required from an insurer, whereas the proposed ONI Act would grant such subpoena power.

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For additional information:

Jorden Burt has formed a special Task Force to monitor this legislation 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](mailto: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](mailto:tcl@jordenusa.com) or (202) 965-8156). Or you may contact any of Jorden Burt's other regulatory attorneys.

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