

114TH CONGRESS
2D SESSION

H. R. 5143

To provide greater transparency and congressional oversight of international insurance standards setting processes, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 2016

Mr. LUETKEMEYER (for himself, Mr. HUIZENGA of Michigan, Mr. PEARCE, Mrs. WAGNER, Mr. BARR, Mr. ROTHFUS, and Mr. WESTMORELAND) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To provide greater transparency and congressional oversight of international insurance standards setting processes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Transparent Insurance
5 Standards Act of 2016”.

6 **SEC. 2. CONGRESSIONAL FINDINGS.**

7 The Congress finds the following:

8 (1) The State-based system for insurance regu-
9 lation in the United States has served American con-

1 consumers well for more than 150 years and has fos-
2 tered an open and competitive marketplace with a
3 diversity of insurance products to the benefit of pol-
4 icyholders and consumers.

5 (2) Protecting policyholders by regulating to en-
6 sure an insurer's ability to pay claims has been the
7 hallmark of the successful United States system and
8 should be the paramount objective of domestic pru-
9 dential regulation and emerging international stand-
10 ards.

11 (3) United States officials participating in dis-
12 cussions or negotiations regarding international in-
13 surance standards shall support standards designed
14 for the protection of policyholders.

15 (4) The Secretary of the Treasury shall seek
16 advice and recommendations from a diverse group of
17 outside experts in performing the duties and au-
18 thorities of the Secretary to coordinate Federal ef-
19 forts and develop Federal policy on prudential as-
20 pects of international insurance matters.

21 (5) The draft of the Higher Loss Absorbency
22 capital standard adopted in 2015 by the Inter-
23 national Association of Insurance Supervisors, not-
24 withstanding the concerns of U.S. parties to the
25 International Association of Insurance Supervisors,

1 unequally affects insurance products offered in the
2 United States, an issue that must be addressed.

3 (6) Any international standard agreed to at the
4 International Association of Insurance Supervisors is
5 not self-executing in the United States for any in-
6 surer until implemented through the required Fed-
7 eral or State legislative or regulatory process.

8 **SEC. 3. OBJECTIVES FOR INTERNATIONAL INSURANCE**
9 **STANDARDS.**

10 The objectives of the United States regarding inter-
11 national insurance standards are as follows:

12 (1) To ensure standards that maintain strong
13 protection of policy holders, as reflected in the
14 United States solvency regime.

15 (2) To ensure, pursuant to enactment of the In-
16 surance Capital Standards Clarification Act of 2014
17 (Public Law 113–279), standards that are appro-
18 priate for insurers and are not bank-centric in na-
19 ture.

20 (3) To promote a principles-based approach to
21 insurance supervision, in which capital adequacy is
22 assessed using risk-based capital requirements for
23 insurance combined with qualitative risk assessment
24 and management tools.

1 (4) To consider the most efficient and least dis-
2 ruptive approaches to enhancing regulatory assess-
3 ment of the capital adequacy of insurance groups,
4 including tools that are already in place.

5 (5) To ensure that any international insurance
6 standard recognizes prudential measures used within
7 the United States as satisfying standards finalized
8 by international standard-setting organizations.

9 (6) To support increasing transparency at any
10 global insurance or international standard-setting or-
11 ganization in which the United States participates,
12 including advocating for greater stakeholder public
13 observer access to working groups and committee
14 meetings of the International Association of Insur-
15 ance Supervisors.

16 (7) To ensure that there is a sufficient period
17 for public consultation and comment regarding any
18 proposed international insurance standard before it
19 takes effect.

20 (8) To ensure that the Secretary of the Treas-
21 ury and the Board of Governors of the Federal Re-
22 serve System achieve consensus positions with State
23 insurance commissioners when the Secretary and the
24 Board are United States participants in discussions
25 on insurance issues before the International Associa-

1 tion of Insurance Supervisors, Financial Stability
2 Board, or any other international forum of financial
3 regulators or supervisors that considers such issues.

4 (9) To consider the impact of any such stand-
5 ard on the availability and cost of products to con-
6 sumers.

7 (10) To avoid measures that could limit the
8 availability and accessibility of risk protection and
9 retirement security products that are essential to
10 meeting the needs of aging populations.

11 (11) To ensure that the merits of existing
12 State-based capital standards are recognized and in-
13 corporated in any domestic or global insurance cap-
14 ital standard.

15 (12) To advocate for insurance regulatory
16 standards that are based on the nature, scale, and
17 complexity of the risks posed by the regulated insur-
18 ance group and entity or activity.

19 **SEC. 4. REQUIREMENTS FOR CONSENT TO ADOPT INTER-**
20 **NATIONAL INSURANCE STANDARDS.**

21 (a) PUBLICATION OF STANDARDS; ADOPTION OF
22 CAPITAL AND PRUDENTIAL STANDARDS.—The United
23 States may not agree to, accept, establish, enter into, or
24 consent to the adoption of a final international insurance
25 standard with an international standard-setting organiza-

1 tion or a foreign government, authority, or regulatory enti-
2 ty unless the requirements under both of the following
3 paragraphs are complied with:

4 (1) PUBLICATION.—The requirements under
5 this paragraph are complied with if the conditions
6 under one of the following subparagraphs have been
7 met:

8 (A) BY FEDERAL RESERVE AND TREAS-
9 URY.—The Chairman of the Board of Gov-
10 ernors of the Federal Reserve System and the
11 Secretary of the Treasury have caused the pro-
12 posed text of the proposed international insur-
13 ance standard to be published in the Federal
14 Register and made available for public comment
15 for a period of not fewer than 30 days (which
16 period may run concurrently with the 90-day
17 period referred to in subsection (b)(3)).

18 (B) BY STATE INSURANCE COMMIS-
19 SIONERS.—The State insurance commissioners
20 have caused the proposed text of the proposed
21 international insurance standard to be pub-
22 lished in a similar form and manner that pro-
23 vides for notice and public comment.

1 (2) CAPITAL STANDARD.—In the case only of a
2 final international insurance standard setting forth
3 any capital standard or standards for insurers—

4 (A) such international capital standard is
5 consistent with capital requirements set forth in
6 the State-based system of insurance regulation;

7 (B) the Board has issued capital require-
8 ments for insurance companies supervised by
9 the Board and subject to such requirements,
10 which shall be issued through rulemaking in ac-
11 cordance with the procedures established under
12 section 553 of title 5, United States Code, re-
13 garding substantive rules, under which the peri-
14 ods for notice and public comment shall each
15 have a duration of not fewer than 60 days; and

16 (C) to the extent that such international
17 capital standard is intended to be applied to a
18 company or companies supervised by the Board
19 of Governors of the Federal Reserve System, is
20 consistent with the capital requirements of the
21 Board for such companies.

22 (b) SUBMISSION AND LAYOVER PROVISIONS.—The
23 Secretary and the Board may not agree to, accept, estab-
24 lish, enter into, or consent to the adoption of an inter-
25 national insurance standard established through an inter-

1 national standard-setting organization or a foreign govern-
2 ment, authority, or regulatory entity unless—

3 (1) the Secretary and the Board have—

4 (A) conducted an analysis under subsection
5 (c) of the proposed international insurance
6 standard; and

7 (B) submitted to the covered congressional
8 committees, on a day on which both Houses of
9 Congress are in session, a copy of the proposed
10 final text of the proposed international insur-
11 ance standard and the report required under
12 subsection (c)(2) regarding such analysis;

13 (2) the Secretary and the Chairman of the
14 Board have determined, pursuant to such analysis,
15 that the proposed standard will not result in any
16 change in State law; and

17 (3) a period of 90 calendar days beginning on
18 the date on which the copy of the proposed final text
19 of the standard is submitted to the covered congress-
20 sional committees under paragraph (1)(B) has ex-
21 pired, during which period the Congress may take
22 action to approve or reject such final standard.

23 (c) JOINT ANALYSIS BY CHAIR OF THE FEDERAL
24 RESERVE AND SECRETARY OF THE TREASURY.—

1 (1) IN GENERAL.—An analysis under this sub-
2 section of a proposed final international insurance
3 standard shall be an analysis conducted by the Sec-
4 retary and the Chairman of the Board of Governors
5 of the Federal Reserve System, in consultation with
6 the State insurance commissioners, of the impact of
7 such standard on consumers and markets in the
8 United States and whether any changes in State law
9 will result from such final standard.

10 (2) REPORT.—Upon completion of an analysis
11 under this subsection of a final international insur-
12 ance standard, the Secretary and the Board shall
13 submit a report on the results of the analysis to the
14 covered congressional committees and the Comp-
15 troller General of the United States. The report
16 shall include a statement setting forth the deter-
17 mination made pursuant to paragraph (1) regarding
18 any changes in State law resulting from such final
19 standard.

20 (3) NOTICE AND COMMENT.—

21 (A) NOTICE.—The Secretary and the
22 Chairman of the Board of Governors of the
23 Federal Reserve System shall provide notice be-
24 fore the date on which drafting the report is

1 commenced and after the date on which the
2 draft of the report is completed.

3 (B) OPPORTUNITY FOR COMMENT.—There
4 shall be an opportunity for public comment for
5 a period beginning on the date on which the re-
6 port is submitted under paragraph (2) and end-
7 ing on the date that is not fewer than 60 days
8 after the date on which the report is submitted.
9 Nothing in this subparagraph shall affect the
10 authority of the Board to issue the rule referred
11 to in subsection (a)(2).

12 (4) REVIEW BY COMPTROLLER GENERAL.—
13 Upon submission of a report pursuant to paragraph
14 (2) to the Comptroller General, the Comptroller
15 General shall review the report and shall submit a
16 report to the Congress setting forth the conclusions
17 of the Comptroller General's review.

18 (d) LIMITED EFFECT.—This section may not be con-
19 strued to establish or expand any authority to implement
20 an international insurance standard in the United States
21 or for the United States or any representative of the Fed-
22 eral Government to adopt or enter into any international
23 insurance standard.

24 (e) TREATMENT OF STATE LAW.—In accordance
25 with the Act of March 9, 1945 (Chapter 20; 59 Stat. 33;

1 15 U.S.C. 1011 et seq.), commonly referred to as the
2 “McCarran-Ferguson Act”, this section may not be con-
3 strued to preempt State law.

4 **SEC. 5. REPORTS.**

5 (a) REPORTS AND TESTIMONY BY SECRETARY OF
6 THE TREASURY AND CHAIR OF THE FEDERAL RE-
7 SERVE.—The Secretary and the Chairman of the Board
8 of Governors of the Federal Reserve System shall submit
9 to the covered congressional committees an annual report
10 and provide testimony, not less often than every 6 months,
11 to the covered congressional committees on the efforts of
12 the Secretary and the Chairman with the State insurance
13 commissioners with respect to international insurance
14 standard-setting organizations and international insur-
15 ance standards, including—

16 (1) a description of the insurance standard-set-
17 ting issues under discussion at international stand-
18 ard-setting bodies, including the Financial Stability
19 Board and the International Association of Insur-
20 ance Supervisors;

21 (2) a description of the effects that inter-
22 national insurance standards could have on con-
23 sumers and insurance markets in the United States;

24 (3) a description of any position taken by the
25 Secretary and the Board in international insurance

1 discussions or on any international insurance stand-
2 ard;

3 (4) a description of the efforts by the Secretary
4 and the Board to increase transparency and ac-
5 countability at the Financial Stability Board with re-
6 spect to insurance proposals and the International
7 Association of Insurance Supervisors, including ef-
8 forts to provide additional public access to working
9 groups and committees of the International Associa-
10 tion of Insurance Supervisors; and

11 (5) a description of how the Secretary and the
12 Board are meeting the objectives set forth in section
13 3, or, if such objectives are not being met, an expla-
14 nation of the reasons for not meeting such objec-
15 tives.

16 (b) REPORTS AND TESTIMONY BY STATE INSURANCE
17 COMMISSIONERS.—The State insurance commissioners
18 may provide testimony or reports to the Congress on the
19 issues described in subsection (a).

20 (c) REPORT ON TRANSPARENCY.—Not later than
21 180 days after the date of enactment of this Act, the
22 Chairman of the Board of Governors of the Federal Re-
23 serve System and the Secretary shall submit to the Con-
24 gress a report and provide testimony to the Congress on
25 the efforts of the Chairman and the Secretary pursuant

1 to subsection (a)(4) of this section to increase trans-
2 parency at meetings of the International Association of In-
3 surance Supervisors.

4 **SEC. 6. DEFINITIONS.**

5 In this Act:

6 (1) **BOARD.**—The term “Board” means the
7 Board of Governors of the Federal Reserve System,
8 or the designee of the Board.

9 (2) **COVERED CONGRESSIONAL COMMITTEES.**—
10 The term “covered congressional committees” means
11 the Committee on Financial Services of the House of
12 Representatives and the Committee on Banking,
13 Housing and Urban Affairs of the Senate.

14 (3) **INTERNATIONAL INSURANCE STANDARD.**—
15 The term “international insurance standard” means
16 any international insurance supervisory standard de-
17 veloped by an international standards setting organi-
18 zation, or regulatory or supervisory forum, in which
19 the United States participates, including the Com-
20 mon Framework for the Supervision of Internation-
21 ally Active Insurance Groups, the Financial Stability
22 Board, and the International Association of Insur-
23 ance Supervisors.

1 (4) SECRETARY.—The term “Secretary” means
2 the Secretary of the Treasury, or the Secretary’s
3 designee.

4 (5) STATE INSURANCE COMMISSIONERS.—The
5 term “State insurance commissioners” means the
6 heads of the insurance commissions for the States,
7 or State employees who are the designees of such of-
8 ficials.

9 **SEC. 7. TREATMENT OF COVERED AGREEMENTS.**

10 Section 314 of title 31, United States Code is amend-
11 ed—

12 (1) in subsection (c)—

13 (A) by designating paragraphs (1) and (2)
14 as paragraphs (2) and (3), respectively; and

15 (B) by inserting before paragraph (2), as
16 so redesignated, the following new paragraph:

17 “(1) the Secretary of the Treasury and the
18 United States Trade Representative have caused to
19 be published in the Federal Register, and made
20 available for public comment for a period of not
21 fewer than 30 days (which period may run concu-
22 rrently with the 90-day period for the covered agree-
23 ment referred to in paragraph (3)), the proposed
24 text of the covered agreement;” and

1 (2) by adding at the end the following new sub-
2 sections:

3 “(d) CONSULTATION WITH STATE INSURANCE COM-
4 MISSIONERS.—In any negotiations regarding a con-
5 templated covered agreement, the Secretary and the
6 United States Trade Representative shall consult with and
7 directly include State insurance commissioners.

8 “(e) PROHIBITION ON REGULATORY AUTHORITY.—
9 In accordance with subsections (k) and (l) of section 313,
10 a covered agreement shall not be used to establish or pro-
11 vide the Federal Insurance Office or the Treasury with
12 any general supervisory or regulatory authority over the
13 business of insurance or with the authority to participate
14 in a supervisory college or similar process.

15 “(f) TREATMENT UNDER OTHER LAW.—A covered
16 agreement shall not be considered an international insur-
17 ance standard for purposes of the Transparent Insurance
18 Standards Act of 2016 and shall not be subject to such
19 Act.”.

20 **SEC. 8. DUTIES OF INDEPENDENT MEMBER OF FINANCIAL**
21 **STABILITY OVERSIGHT COUNCIL.**

22 Subsection (a) of section 112 of the Dodd-Frank Wall
23 Street Reform and Consumer Protection Act (12 U.S.C.
24 5322(a)) is amended by adding at the end the following
25 new paragraph:

1 “(3) DUTIES OF INDEPENDENT MEMBER.—To
2 assist the Council with its responsibilities to monitor
3 international insurance developments, advise Con-
4 gress, and make recommendations, the Independent
5 Member of the Council shall have the authority to—

6 “(A) regularly consult with international
7 insurance supervisors and international finan-
8 cial stability counterparts;

9 “(B) consult with, advise, and assist the
10 Secretary of the Treasury with respect to rep-
11 resenting the Federal Government of the
12 United States, as appropriate, in the Inter-
13 national Association of Insurance Supervisors
14 (including to become a non-voting member
15 thereof), particularly on matters of systemic
16 risk, and to consult with the Board of Gov-
17 ernors of the Federal Reserve System and the
18 States concerning such matters;

19 “(C) attend the Financial Stability Board
20 of The Group of Twenty and join with other
21 members from the United States, including on
22 matters related to insurance and financial sta-
23 bility, and provide for the attendance and par-
24 ticipation at such Board, on matters related to

1 insurance and financial stability, of State insur-
2 ance commissioners; and

3 “(D) attend, with the United States dele-
4 gation, the Organization for Economic Coopera-
5 tion and Development and observe and partici-
6 pate at the Insurance and Private Pensions
7 Committee of such Organization on matters re-
8 lated to insurance and financial stability.”.

9 **SEC. 9. STATE INSURANCE REGULATOR INVOLVEMENT IN**
10 **INTERNATIONAL STANDARD SETTING.**

11 Parties representing the United States at the Finan-
12 cial Stability Board of the Group of Twenty on matters,
13 and in meetings, related to insurance and financial sta-
14 bility shall consult with, and seek to include in such meet-
15 ings, the State insurance commissioners.

16 **SEC. 10. RULE OF CONSTRUCTION.**

17 Nothing in this Act or the amendments made by this
18 Act may be construed to support or endorse the domestic
19 capital standard for insurers referred to in section 4(a)(2)
20 or any such domestic capital standards established by the
21 Board.

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