



H.R. 5143 – Transparent Insurance Standards Act of 2016 (Rep. Luetkemeyer, R-MO)

CONTACT: [Jennifer Weinhart](#), 202-226-0706

FLOOR SCHEDULE:

Expected to be considered on December 7, 2016 under a structured [rule](#).

The rule would also provide authority for the house to consider bills under suspension of the Rules on Thursday, November 8, and for the management of the House during the recess between adjourning at the conclusion of legislative business of the 114th Congress and the convening of the 115th Congress.

TOPLINE SUMMARY:

[H.R. 5143](#) would provide greater congressional oversight over the content and negotiations of international insurance standards, establishing requirements for negotiation objectives and transparency before the Treasury Department or the Federal Reserve can accept or enter into the adoption of an international insurance standard.

COST:

The Congressional Budget Office (CBO) [estimates](#) that H.R. 5143 would “increase costs to the Federal Reserve System for conducting the required analysis and for preparing reports and testimony” by \$7 million over the 2017-2026 period.

The Rules Committee print contains language to fully offset the estimated \$7 million cost, and limits the amount of money the SEC can deposit in its reserve fund to no greater than \$43 million for FY17, and directs any excess amounts to be transferred to the Treasury General Fund.

CONSERVATIVE CONCERNS:

There are no substantive concerns.

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

Historically, insurance companies are regulated by the states, with Congress occasionally reviewing the effectiveness of a state-based system. Dodd-Frank expanded the federal oversight component of the insurance world, establishing the Federal Insurance Office, with the purpose of serving as U.S. representation during the negotiation of international agreements. According to the [Committee Report](#), this brought insurance companies, holding companies, and insurance subsidiaries under the umbrella of the

Financial Stability Oversight Council (FSOC), where three members represent the insurance perspective. Moreover, as Dodd-Frank also provides authority over non-bank institutions, it allows for a minimum capital standard to be established for domestic insurance companies, setting the amount of capital a firm must hold relative to its obligations.

In November 2015, the US and European Union initiated negotiations over an international agreement on insurance regulation. This legislation would provide for international negotiations to be consistent with long-standing congressional intent to maintain a state-based regulation scheme for insurance firms.

This legislation would set forth 12 objectives for adopting international insurance standards:

- (1) To ensure standards that maintain strong protection of policy holders, as reflected in the United States solvency regime.
- (2) To ensure, pursuant to enactment of the [Insurance Capital Standards Clarification Act of 2014](#), that standards that are appropriate for insurers and are not bank-centric in nature.
- (3) To promote a principles-based approach to insurance supervision, in which capital adequacy is assessed using risk-based capital requirements for insurance combined with qualitative risk assessment and management tools.
- (4) To consider the most efficient and least disruptive approaches to enhancing regulatory assessment of the capital adequacy of insurance groups, including tools that are already in place.
- (5) To ensure that any international insurance standard recognizes prudential measures used within the United States as satisfying standards finalized by international standard-setting organizations.
- (6) To support increasing transparency at any global insurance or international standard-setting organization in which the United States participates, including advocating for greater stakeholder public observer access to working groups and committee meetings of the International Association of Insurance Supervisors.
- (7) To ensure that there is a sufficient period for public consultation and comment regarding any proposed international insurance standard before it takes effect.
- (8) To ensure that the Secretary of the Treasury and the Board of Governors of the Federal Reserve System achieve consensus positions with State insurance commissioners when the Secretary and the Board are United States participants in discussions on insurance issues before the International Association of Insurance Supervisors, Financial Stability Board, or any other international forum of financial regulators or supervisors that considers such issues.
- (9) To consider the impact of any such standard on the availability and cost of products to consumers.
- (10) To avoid measures that could limit the availability and accessibility of risk protection and retirement security products that are essential to meeting the needs of aging populations.
- (11) To ensure that the merits of existing State-based capital standards are recognized and incorporated in any domestic or global insurance capital standard.
- (12) To advocate for insurance regulatory standards that are based on the nature, scale, and complexity of the risks posed by the regulated insurance group and entity or activity.

This legislation would prohibit the United States from agreeing to, entering into, or adopting a final international insurance standard unless the standard is published by the Federal Reserve and the Treasury, and by the state insurance commissioners and made available for comment. In the case of final insurance standards that set capital standards for insurers, this legislation would prohibit the United States from agreeing to, entering into, or adopting a final international insurance standard unless the international capital standard is consistent with those in the state-based systems, the Board has issued capital requirements for insurers that they supervise through a rulemaking with notice and comment, and the standard is consistent with capital requirements of the Boards of companies supervised by the Federal Reserve System.

This bill would create notice and comment requirements for any covered agreements, requiring the Treasury and United States Trade Representative to negotiate directly with state insurance commissioners

as they pertain to potential covered agreements, and prohibits an agreement from being used to provide Treasury or the FIO with regulatory authority over the insurance business or the authority to participate in a supervisory college. Covered agreements would not be considered international insurance standards under this legislation.

The Secretary of the Board would be prohibited from agreeing to, entering into, or adopting a final international insurance standard unless they have undertaken a joint analysis between the Federal Reserve and the Treasury, and have submitted to Congress proposed final text of the standard and the joint analysis report. The Secretary and the Chairman of the Board of Governors must have determined through the analysis, that any proposed standard does not conflict with state law, and that any capital standard is certified, so that it only exists to pay insurer's policy holder claims in the event of liquidation. A standard may not be adopted unless it is submitted to Congress at least 90 days prior to adoption, so that Congress has the opportunity to take action on the text.

The Joint Analysis by the Chair of the Federal Reserve and the Treasury would be made in consultation with state insurance commissioners, and would consider the impact on consumer markets and state laws. The report must be submitted to Congress and the Comptroller General, with opportunity for notice and comment. The Comptroller General must also review the report and submit his conclusions to Congress.

The Treasury and the Federal Reserve would be required to submit an annual report to Congress, with testimony at least every six months, on their efforts with state insurance commissioners and their work with international insurance standard-setting organizations and on international insurances standards. The report must include: (1) a description of the issues under discussion; (2) a description of the effects the standards could have on consumers and markets; (3) a description of positions taken by Treasury or the Board of Governors; (4) a description of their efforts to increase transparency and accountability at the Financial Stability Board as it relates to insurance proposals, and at the International Association of Insurance Supervisors; and (5) a description of how the Secretary or the Board are meeting objectives or why they are not being met. State insurance commissioners would also be permitted to provide reports to Congress.

This legislation would require Treasury and the Board of Governors to submit a report to Congress on their efforts to increase transparency at the International Association of Insurance Supervisor meetings within 180 days of enactment.

This legislation would require a GAO report on transparency of any organization that is acting as a designee of, or at the direction of, the head of a state insurance department on international insurance standards issues, and is not directly employed by the state. The report must detail: (1) their role and relationship with state insurance departments activities, and a detail of their participation in policy deliberations; (2) any financial support they provide to the state; (3) a budget of any such organization as they are involved with the International Association of Insurance Supervisors, the Financial Stability Board, or any other related international forum; (4) an analysis of whether their budgets are developed in as transparent of a manner as those developed for state departments of insurance or Federal executive branch regulatory agencies; and (5) the extent to which the work product of an organization can create self-executing national standards, and if those standards are developed in a comparably transparent process.

It would permit the Independent Member of the Financial Stability Oversight Council to regularly consult with insurance supervisors and their international counterparts, to consult with the Treasury and the Board of Governors on matters pertaining to systemic risk, to attend the Financial Stability Board of the Group of Twenty and join members on matters relating to insurance and financial stability, and to attend the Organization for Economic Cooperation and Development with the U.S. delegation to participate in the Insurance and Private Pensions Committee.

This legislation would require anyone representing the U.S. at the [Financial Stability Board of the Group of Twenty](#) to participate in the Insurance and Private Pensions Committee.

A committee report can be found [here](#)

AMENDMENTS

1. [Rep. DeSantis](#) (R-FL) – This amendment adds a requirements that an international agreement must be written in plain writing, as is defined in the [Plain Writing Act](#).

COMMITTEE ACTION:

H.R. 5143 was introduced on April 29, 2016 and was referred to the House Committee on Financial Services. It was ordered to be reported, amended, by the yeas and nays, 34-25, on June 16, 2016.

ADMINISTRATION POSITION:

A Statement of Administration Policy in opposition can be found [here](#).

CONSTITUTIONAL AUTHORITY:

Congress has the power to enact this legislation pursuant to the following: Article 1, Section 8, Clause 3, the Commerce Clause, of the United States Constitution. Additionally, Article 1, Section 7, Clause 2 of the Constitution allows for every bill passed by the House of Representatives and the Senate and signed by the President to be codified into law; and therefore implicitly allows Congress to repeal any bill that has been passed by both chambers and signed into law by the President.

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