



Dodd-Frank Wall Street Reform and Consumer Protection Act

How Will It Affect the Insurance Industry?



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Dodd-Frank Act: Title I

**Creates Financial Stability
Oversight Council (FSOC)**



Dodd-Frank Act: Title I

- Purposes of FSOC:
 - Identify risks to the financial stability of the United States
 - Promote market discipline
 - Respond to emerging threats to the stability of the U.S. financial system



Dodd-Frank Act: Title 1

- FSOC Voting Members
 - Chair-Treasury Secretary
 - Chair of the Federal Reserve
 - Chair of the SEC
 - Director of the Bureau of Consumer Financial Protection
 - Comptroller of the Currency
 - Chair of the FDIC



Dodd-Frank Act: Title I

- FSOC Voting Members
 - Chair of the Commodity Futures Trading Commission (CFTC)
 - Director of the Federal Housing Finance Agency
 - Chair of the National Credit Union Administration Board



Dodd-Frank Act: Title I

- FSOC Voting Members
 - **An independent member having insurance expertise**-appointed by the President with the advice and consent of the Senate



Dodd-Frank Act: Title I

- FSOC Non-Voting Members
 - **Director of the Federal Insurance Office (FIO)**
 - **A state insurance commissioner**
(to be designated by a selection process determined by the State insurance commissioners)



Dodd-Frank Act: Title I

- FSOC Non-Voting Members
 - A state banking supervisor
 - A state securities commissioner (or an officer performing like functions)
 - Director of the Office of Financial Research (will collect information for the FSOC)



How Could FSOC Affect Insurers?

- Authority to determine that a “Nonbank Financial Company,” whose material financial distress or the nature, size, scope, concentration, etc. of its activities could pose a threat to the financial stability of the U.S., shall be supervised by the Federal Reserve



What is “Nonbank Financial Co.”?

- A foreign or U.S. company “predominantly engaged in financial activities”:
 - The annual gross revenues derived by the company and its subsidiaries, from activities “financial in nature” (and, if applicable, the ownership or control of insured depository institutions) is 85% or more of their consolidated annual gross revenues **or**
 - The consolidated assets of the company and its subsidiaries that relate to activities that are “financial in nature” (and, if applicable, the ownership or control of insured depository institutions) are 85% or more of their consolidated assets



Federal Reserve Supervision?

Considerations: leverage, off-balance-sheet exposures, nature of transactions and relationships with other significant companies, importance as source of credit, extent to whether assets managed versus owned, degree already regulated, size and scope, assets and liabilities

Determination of Supervision: requires 2/3 vote by the FSOC, including a “yes” vote by the Treasury Secretary

If supervised: subject to specific prudential standards and reporting requirements regarding activities and stability



Dodd-Frank Act: Title V

**Creates Federal
Insurance Office**



Federal Insurance Office

- Part of the Department of the Treasury
- Functions: Monitor, recommend, assist, coordinate and develop, determine, consult, perform



Beyond the Reach of the FIO

- Authority of the FIO extends to all lines of insurance, except
- FIO has no authority regarding health insurance, long-term care insurance (unless part of a life insurance or annuity policy), or crop insurance



Functions of the FIO

- Data gathering
 - In carrying out its functions, can receive and collect data from insurance industry and insurers, enter into information sharing agreements, analyze and disseminate data and information, and issue reports



Definition of “Insurer”

- “Insurer” means any entity that writes insurance or reinsures risks and issues contracts or policies in one or more States
- “Small insurers” exception – FIO may set minimum size threshold exception for smaller companies on data portion of Act (not yet)



Functions of the FIO

- Reporting
 - Annual report on whatever preemption actions have been taken
 - Annual report on the state of the “insurance industry,” and any other information deemed relevant by the Director or requested by congressional committees
 - Starting Sept. 30, 2011



Functions of the FIO

- Report on U.S. and Global Reinsurance Market
- Describe breadth and scope of the global reinsurance market and the critical role such market plays in supporting insurance in the U.S. (due Sept. 30, 2012)
- Describe impact of Act's reinsurance provisions on ability of state regulators to access reinsurance information for regulated companies in their jurisdictions (due Jan. 1, 2013, updated Jan. 1, 2015)



Functions of the FIO

- Study and Report on Regulation of Insurance
 - How to modernize and improve the system of insurance regulation in the U.S.
 - Due 18 months after enactment of DFA (Jan. 2012)



Regulation of Insurance Report

- Shall be based on and guided by:
 - Systemic risk regulation
 - Capital standards and relationship between capital allocation and liabilities
 - Consumer protection for insurance products and practices
 - The degree of national uniformity of state regulations



Regulation of Insurance Report

- Shall be based on and guided by:
 - Regulation of insurance companies and their affiliates on a consolidated basis
 - International coordination of insurance regulation



Regulation of Insurance Report

- Shall examine the following factors:
 - Costs and benefits of federal regulation across various lines of insurance
 - Feasibility of regulating only certain lines at the federal level
 - Ability of potential federal regulation to eliminate or minimize regulatory arbitrage
 - Impact that developments of insurance regulation in foreign jurisdictions might have on federal regulation of insurance



Regulation of Insurance Report

- Shall examine the following factors:
 - Ability of federal regulation or regulator to provide “robust consumer protection”
 - Potential consequences of subjecting insurance companies to federal resolution authority, including effects on operation of state insurance guaranty funds, policyholder protection, life insurance companies, and international competitiveness



Regulation of Insurance Report

- Shall examine the following factors:
 - And such other factors as the Director determines necessary or appropriate



Savings Clause

- The FIO cannot preempt:
 - State measures regarding rates, premiums, underwriting or sales practices
 - State coverage requirements
 - State antitrust laws related to insurance



Savings Clause

- The FIO cannot preempt:
 - State insurance measure governing the capital or solvency of an insurer, except if it results in less favorable treatment to a non-US insurer than a U.S. insurer



FIO and Preemption

- FIO can determine that state insurance measures are preempted if it is inconsistent with a covered agreement, and results in less favorable treatment of a non-U.S. insurer
- Must consult with state regulators, publish notice of intent, and allow comment
- Subject to a “de novo” judicial review



Nonadmitted and Reinsurance Reform Act of 2010 (NRRRA)

State-Based Insurance Reform,
Addressing Nonadmitted
Insurance and Reinsurance



Part I – Nonadmitted Insurance

- “Nonadmitted insurer” means insurer not licensed to do business in the state (surplus lines)
- “Nonadmitted insurance” is property and casualty insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept such insurance



Focus On “Insured’s Home State”

- Even if risk insured is in multiple states, rules of insured’s home state will govern
- “Home state” is the state where insured has principal place of business or residence, or
- If 100% of risk located outside home state, state with greatest percentage allocation of taxable premium



Premium Tax Payments

- Only home state of an insured may require premium tax payment for nonadmitted insurance
- Act urges states (via NAIC) to form an interstate compact containing nationwide, uniform requirements, forms, and procedures for reporting, payment, collection, and allocation of premium taxes for surplus lines



Tax Allocation Reports

- Insured's home state may require surplus lines brokers (and insureds who have independently procured insurance) to annually file tax allocation reports with insured's home state
- Report should detail the portion of nonadmitted insurance policy premiums attributable to properties, risks, or exposures located in each state



Home State Regulation

- Placement of nonadmitted insurance shall be subject to statutory and regulatory requirements solely of insured's home state
- Only insured's home state can require surplus lines broker to be licensed
- Preempts laws that would conflict with insured's home state's laws, except for worker's compensation



National Producer Database

- Phases out (within two years of Act's enactment) collection of any fees for licensing of surplus lines brokers, UNLESS state has laws/regulations providing the state is a participant in NAIC's national insurance producer database, or other equivalent national database, for surplus lines broker licensing



National Producer Database

- Will be handled online by National Insurance Producer Registry (NIPR), a non-profit affiliate of NAIC
- Online registry reduces paperwork, speeds up licensing process, makes it easier to meet different states' requirements
- All states must join by July 2012



Study of Nonadmitted Insurance Market

- Comptroller, in consultation with NAIC, to conduct study and report on effect of NRRRA after first 18 months on size of market share of nonadmitted insurance market for providing coverage typically provided by the admitted insurance market
- Focus on any shift to surplus lines, differences in price and availability
- Report due Jan. 2013



Part II – Reinsurance

- “Reinsurance” means the assumption by an insurer of all or part of a risk undertaken originally by another insurer
- “Reinsurer” means insurer principally engaged in business of reinsurance, with no “significant” percentage of net premiums from direct insurance, no ongoing solicitation of direct insurance



Other Definitions

- “Domiciliary state” means state in which insurer or reinsurer is incorporated (or entered through) and licensed




Credit for Reinsurance

- If the domiciliary state of ceding insurer is NAIC-accredited (or has substantially similar financial solvency requirements) and recognizes credit for reinsurance for the ceded risk, no other state may deny such credit for reinsurance



Preemption of Conflicting Laws

- All laws, regulations, provisions, or actions of a state that is not the domiciliary state of the ceding insurer, except for taxes and assessments on insurance companies or insurance income, are preempted if they do the following:

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- Restrict or eliminate the rights of the ceding or assuming insurer to arbitrate, as long as consistent with Title 9
 - Require a certain state's law to govern the reinsurance contract, disputes arising from, or requirements of the contract
 - Attempt to enforce a reinsurance contract on terms different than those in the contract (to the extent not inconsistent with the Act)
 - Otherwise apply the laws of the state to reinsurance agreements of ceding insurers not domiciled in that state



Regulation of Reinsurer Solvency


- If domiciliary state of reinsurer is NAIC-accredited (or has financial solvency requirements substantially similar to the accreditation requirements), that state shall be solely responsible for regulating financial solvency of reinsurer, and no other state may require reinsurer to provide any additional financial information, other than information required to be filed with its domiciliary state





What Does Dodd-Frank Mean for Insurers?

Short Answer:

**We Don't Have the Complete
Answer Yet**

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- Federal Insurance Office has not yet implemented any specific regulations
 - Searches revealed no website yet for the Federal Insurance Office
 - Strong NAIC input resulted in FIO serving, initially at least, as an information-gathering and reporting entity, rather than a national regulating entity

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- The most pressing concern appears to be the possibility that insurance companies could be designated by FSOC as a “threat to U.S. financial stability” and among those “supervised” (read, regulated) by the Federal Reserve

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- FSOC has solicited comments on what criteria should be used to determine which “nonbank financial companies” should be designated for enhanced supervision
 - Can read through comments at www.regulations.gov (search for nonbank financial company)




Who Has Commented?

- The Geneva Association (int'l ass'n for study of insurance economics)
- Prop. & Cas. Ins. Ass'n of America
- American Ins. Association
- Nat'l Ass'n of Mutual Ins. Cos.
- Nationwide Ins. Co.
- Reinsurance Ass'n of America



Comments – Insurers are Not Risks to Financial Stability

- Insurers are already highly regulated by the states
- Have state requirements for capital, liquidity, leverage, investment limits
- Insurers are already protected from failure by state guaranty funds
- Most insurers are not “interconnected” with banks or investment firms – those that are are federally regulated

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- Insurers get premiums paid up front, and the obligations are long-term
 - Insurers transfer risk to reinsurers
 - Insurance, by its nature, operates independently of the economic cycle because insurance payments are contingent on death, accidents, catastrophic events
 - Insurance market is highly competitive



THE END
