Congressional Research Service
Informing the legislative debate since 1914

IN FOCUS

Updated January 5, 2023

Introduction to Financial Services: Insurance

This In Focus provides a summary of the insurance market and regulatory system in the United States.

Market Structure

Insurance companies constitute a major segment of the U.S. financial services industry. The insurance industry is often separated into two parts:

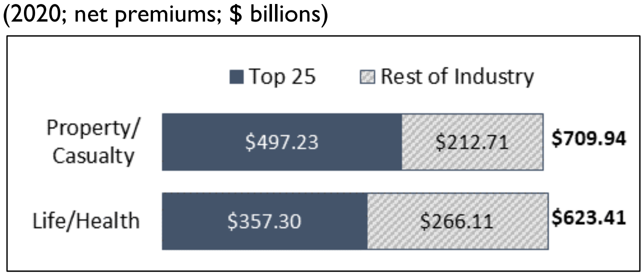
1. *life and health insurance*, which also includes annuity products; and
2. *property and casualty insurance*, which includes most other lines of insurance, such as homeowners insurance, automobile insurance, and various commercial lines of insurance purchased by businesses.

According to the insurance rating agency A.M. Best, 2021 net premiums for the more than 300 life/health companies (with over 800 subsidiaries) in the United States totaled $623.4 billion, with admitted assets totaling $8.41 trillion. The 2021 net premiums for the more than 1,000 property/casualty insurance companies (with over 2,800 subsidiaries) totaled $709.9 billion, with admitted assets totaling $2.61 trillion.

Despite the large numbers of insurance companies, both life/health and property/casualty insurances are also reasonably concentrated industries, with the top 25 life/health company groups writing 57.3% of overall premiums and the top 25 property/casualty company groups writing 70.0% of overall premiums. **Figure 1** displays the market share of the top 25 insurers versus the rest of the market in 2020.

Figure 1. Insurance Market Concentration

(2020; net premiums; $ billions)



Source: Figure created by CRS using data from A.M. Best for 2021.

Different lines of insurance present different characteristics and risks. Life insurance is typically a longer-term proposition with contracts stretching over decades and insurance risks that are relatively well defined in actuarial tables. Annuity products, which are also usually offered by life insurers, present similar long-term insurance risks. Particular life insurance and annuity products, however, may be based on securities, such as stocks or bonds, and thus may present shorter-term risks more similar to investment products for both the consumer and the insurer. Property/casualty insurance is typically a shorter-term proposition with six-month or one-year contracts and greater exposure to catastrophic risks.

Health insurance has evolved in a different direction than has life and property/casualty insurance. Many health insurance companies are heavily involved with health care delivery, including negotiating contracts with physicians and hospitals, rather than purely insurance operations. The health insurance regulatory system is much more influenced by the federal government through Medicare, Medicaid, the Employee Retirement Income Security Act (P.L. 93-406), and the Patient Protection and Affordable Care Act (P.L. 111-148) than life and property/casualty insurance is. The following discussion focuses on property/casualty and life insurance.

Role of Federal and State Governments

The role of the federal government in regulating private insurance is relatively limited compared with its role in banking and securities. Insurance companies, unlike banks and securities firms, have been chartered and regulated solely by the states for the past 150 years. There are no federal regulators of insurance akin to those for securities or banks, such as the Securities and Exchange Commission (SEC) or the Office of the Comptroller of the Currency (OCC), respectively.

Each state government has a department or other entity charged with licensing and regulating insurance companies and those individuals and companies selling insurance products. States regulate the solvency of the companies and the content of insurance products as well as the market conduct of companies. Although each state sets its own laws and regulations for insurance, the National Association of Insurance Commissioners (NAIC) acts as a coordinating body that sets national standards through model laws and regulations. Before having legal effect, models adopted by the NAIC must be enacted by the states, which can be a lengthy and uncertain process. The states have also developed a system of guaranty funds designed to protect policyholders in the event of insurer insolvency.

The limited federal role stems from both Supreme Court decisions and congressional action. In the 1868 case *Paul v. Virginia*, the Court found that insurance was not considered interstate commerce and thus not subject to federal regulation. This decision was effectively reversed in the Court's 1944 decision *U.S. v. South-Eastern Underwriters Association*. In 1945, Congress passed the McCarran-Ferguson Act (15 U.S.C. §§1011 et seq.), specifically preserving the states' authority to regulate and tax insurance and granting a federal antitrust exemption to the insurance industry for "the business of insurance."

In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) significantly altered the overall U.S. financial regulatory structure, but it largely left the state-centered insurance regulatory structure intact. The act did affect insurance regulation in several areas: (1) enhanced systemic risk regulatory authority, including authority over insurers, was vested in the Federal Reserve and in the new Financial Stability Oversight Council (FSOC); (2) oversight of bank and thrift holding companies, including companies with insurance subsidiaries, was consolidated in the Federal Reserve with new capital requirements added; and (3) a new Federal Insurance Office (FIO) was created within the Treasury Department. Dodd-Frank also included measures affecting the states' oversight of surplus lines insurance and reinsurance.

Policy Issues

Recent congressional attention to insurance regulatory issues can be broken into a number of broad areas:

Pandemic Response. As public health measures, such as widespread lockdowns, were implemented addressing the COVID-19 pandemic, many businesses faced denials of their business interruption insurance claims. Such denials typically resulted from clauses requiring physical damage for a claim or from language specifically excluding virus-related claims. Insurance for future pandemic risks continues to be relatively unavailable or unaffordable. In the 117th Congress, H.R. 5823 would have created a federal program addressing pandemic insurance going forward.

Targeted Federal Legislation Changing the State Regulatory System. The 50-state system of insurance regulation has been criticized on a variety of grounds, including for inefficiency due to perceived duplicative and burdensome regulation between states and for ineffectiveness in ensuring nondiscriminatory outcomes for insurance consumers. Such criticism has resulted in past proposals ranging from a full federal chartering system for insurers to narrower targeted efforts to alter the state system. Examples of such proposed legislation have included limited federal regulation of auto insurance rating factors in the 117th Congress (H.R. 1270) and expansion of the federal Liability Risk Retention Act, which would have preempted state insurance company licensure laws for a small subset of insurance companies, in the 116th Congress (H.R. 4523).

The Treatment of Insurers Under Dodd-Frank's Systemic Risk Regime. Under Dodd-Frank's provisions, the FSOC designated three of the largest insurers for enhanced regulation by the Federal Reserve (popularly known as systemically important financial institutions or SIFIs) between 2013 and 2014. Since the initial designations, one insurer's designation was rescinded by a court decision, and two were rescinded by FSOC. At this time, no insurer is designated for enhanced regulation. In the 117th Congress, H.R. 3099 would have added a voting state insurance regulator representative to FSOC.

Federal Reserve Capital Standards and Insurers. Banking and insurance present different risk profiles, and it is generally accepted that they require different capital standards. In October 2019, the Federal Reserve put forth proposed rulemaking outlining possible capital standards for insurers, and the Federal Reserve finalized this rulemaking in September 2022. In the 116th Congress, S. 3123 would have directed the Federal Reserve to tailor its insurance capital standards and give additional deference to the state insurance regulators.

The Role of the Federal Insurance Office and the Federal Reserve. Dodd-Frank gave the FIO a number of roles both domestically and internationally. Exactly how the mandates are applied and how the FIO interacts with existing actors—such as the NAIC, the International Association of Insurance Supervisors (IAIS), and the U.S. Trade Representative—is not clear from the statute. Dodd-Frank also gave the Federal Reserve a role in overseeing many more insurers than it had in the past. Some frictions have been reported in this new system, particularly between state regulators and federal actors in the international arena. In the 117th Congress, S. 524 and H.R. 4866 would have abolished the FIO.

Response to International Developments. In 2017, the United States and the European Union (EU) concluded a covered agreement particularly addressing issues around U.S. collateral requirements for non-U.S. insurers and EU supervisory requirements for non-EU insurers under the EU Solvency II regulatory modernization program. This agreement provoked opposition by the states and some portion of the insurance industry but entered into force in 2018. As of September 2022, all the individual states had adopted new laws and regulations, avoiding additional federal actions under the covered agreement. A similar covered agreement was concluded in 2018 between the United States and the United Kingdom (UK) in light of the UK's withdrawal from the EU.

On a separate but somewhat interrelated track, the IAIS has been developing new supervisory and capital standards for insurers, which some fear could disadvantage the U.S. system. P.L. 115-174 directed federal negotiators to achieve consensus with the states in international standard-setting negotiations.

CRS Resources

CRS Insight IN11511, *Insurance and Unexpected Risks: COVID-19 in 2020 and Terrorism in 2001*

CRS Report R45508, *Selected International Insurance Issues in the 116th Congress*

CRS Report R41372, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Insurance Provisions*

CRS Report RL32237, *Health Insurance: A Primer*

Baird Webel, Acting Section Research Manager

IF10043

Disclaimer