

International Insurance Issues and H.R. 5143

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International insurance issues have been of interest to the 114th Congress with House subcommittee hearings in [September 2016](#), [February 2016](#), and [April 2015](#), and several pieces of legislation introduced on the topic including [S. 1086](#), [H.R. 2141](#), and [H.R. 5143](#). [H.R. 5143](#) is scheduled for House floor action the week of December 5, 2016.

[Background](#)

Insurance regulation is centered on the states with only a limited federal role. Following the 2007-2009 financial crisis, [the Dodd-Frank Act](#) enhanced the federal role through several provisions, including the potential Financial Stability Oversight Council (FSOC) designation of insurers as *systemically significant financial institutions* (SIFIs); Federal Reserve (Fed) oversight of SIFIs and insurers with depository affiliates; and the creation of a Federal Insurance Office (FIO). Although not a regulator, FIO has the authority to [monitor](#) the insurance industry and limited power to preempt state laws in conjunction with [covered agreements](#), which FIO and the United States Trade Representative (USTR) could negotiate with foreign entities. Dodd-Frank requires congressional consultations and a 90-day layover period for covered agreements, but such agreements are not required to be approved by Congress.

The international response to the financial crisis included the creation of a Financial Stability Board (FSB) largely made up of various national financial regulators and the increased focus by the International Association of Insurance Supervisors (IAIS) on creating regulatory standards, especially relating to insurer capital levels. The Fed and FIO have assumed roles in the IAIS whereas previously the individual states and the U.S. National Association of Insurance Commissioners (NAIC) had been the sole U.S. representatives. The Dodd-Frank Act also created the position of independent insurance expert as a member of FSOC. The FSOC independent insurance expert has generally not participated in international bodies. Congress has little direct role in international regulatory cooperation agreements such as those reached at the FSB, IAIS, or, for example, the Basel Committee on Banking Supervision. Any such agreements, however, would have no legal impact on the United States until adopted in regulation by federal or state regulators or enacted into federal or state statute.

Congressional interest in international insurance issues has focused on two separate issues: (1) the potential impact of multilateral [international organizations and standards](#) on the United States and (2) ongoing bilateral issues with the European Union (EU). The U.S.-EU issues revolve around the designation of the United States as an *equivalent* under the [EU's Solvency II](#) regulatory scheme, the state requirements for [reinsurance collateral](#), and a potential U.S.-EU

covered agreement addressing these issues. Although potential IAIS standards and U.S.-EU bilateral disputes are formally separate, there is some overlap. For example, the EU plays a significant role in developing international standards and would have an interest in seeing its Solvency II approaches incorporated in such standards (as, of course, would the U.S. regulators with U.S. approaches.)

Although many different policy concerns have been expressed about both international standards and a potential covered agreement with the EU, consistent concerns in both areas have included the coordination among the state and federal insurance entities and the degree of transparency around, and congressional input into, the setting of international standards and the negotiation of covered agreements.

The Transparent Insurance Standards Act of 2016 ([H.R. 5143](#))

[H.R. 5143](#) was marked up and ordered [reported](#) by the Financial Services Committee on a vote of 34-25 on June 16, 2016. CBO [scored the bill](#), finding it would increase spending by a total of \$7 million, an amount to be offset through a reduction in the Securities and Exchange Commission Reserve Fund according to the [House Rules Committee](#). In general, the bill would bolster the primacy of the state-based insurance regulatory system and would increase public and congressional input into the negotiation of international insurance standards and covered agreements.

[H.R. 5143](#) lists specific U.S. objectives regarding international standards, such as ensuring that the Treasury and the Fed achieve consensus positions with the states, promoting the regulatory standards used in the United States, and ensuring transparency in international organizations and international standards. Beyond these general goals, [H.R. 5143](#) creates specific procedural requirements for the adoption of international standards and covered agreements as well as augmenting the authorities of the FSOC independent insurance expert.

Internationals Standards

Prior to the agreement to or adoption of international standards generally:

- The Treasury, Fed, and state insurance commissioners would be required to publish the standards and provide at least 30 days' public comment period.
- The Treasury and Fed would be jointly required to analyze the effect of the standards and report on the analysis. The report would be subject to public comment for at least 60 days and would be reviewed by the Comptroller General.
- The Treasury and Fed must certify that the proposed standards would not result in any change in state law.

If the standards involve capital requirements, additional requirements would apply:

- The Fed must have previously issued its rules for domestic capital requirements.
- The standards must be consistent with both state and Fed capital standards.
- The Fed and Treasury must certify that these capital standards are solely designed to ensure that funds are available to pay policyholder claims.

Any proposed standard must be submitted to Congress and lay over for a period of 90 calendar days. This period may run consecutively with the public comment periods.

[H.R. 5143](#) would also require the Treasury and Fed to provide semi-annual testimony and reports on international activities and a specific report on transparency and the IAIS. The Comptroller General would also be tasked with a report on the transparency of domestic organizations acting as a designee of the states, which would appear to be applicable primarily to the NAIC.

Covered Agreements

[H.R. 5143](#) would add a 30-day public notice and comment requirement as well as a requirement that FIO and USTR "consult with and directly include State insurance commissioners."

FSOC Independent Insurance Expert

Current statute is largely silent on specific authorities of the FSOC independent insurance expert. [H.R. 5143](#) adds the authority to consult with international bodies and attend international groups.