

October 10, 2008

House Financial Services Subcommittee Approves the Insurance Information Act of 2008 to Create an Office of Insurance Information

Congress has taken a promising first step toward remedying a perceived U.S. competitive disadvantage in the global insurance market caused by the current fractured 50-state regulatory framework. On July 9, 2008, the creation of an Office of Insurance Information (“OII”) within the Department of Treasury (“Treasury”) passed its first hurdle. The House of Representatives’ Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises forwarded the Insurance Information Act of 2008 (HR 5840) (the “Act”) to the full Financial Services Committee for its consideration. A hearing was held on June 10 during which representatives from various insurance trade associations testified to the Subcommittee on the provisions of the new legislation. Although this legislation offers some promising movement in the area of insurance regulation, it also may present new challenges to insurance companies.

The proposed OII mirrors Treasury’s recommendation for the creation of an Office of Insurance Oversight (“OIO”) as part of its recently unveiled [Blueprint for a Modernized Financial Regulatory Structure](#) (“Blueprint”). The Blueprint proposes a full overhaul of the existing financial services regulatory framework. Although the Act does not attempt to implement the entire Blueprint, the OII is substantially similar in purpose and authority to the Blueprint’s proposed OIO.¹

The OII, as proposed, serves three primary purposes: (1) “to receive, analyze, collect, and disseminate publicly available data and information and issue reports” on all lines of insurance other than health insurance; (2) to advise the Secretary of the Treasury, the President, and Congress on major domestic and international insurance policy issues; and (3) to establish Federal policies on “international insurance matters” and monitor state insurance laws to maintain consistency with international agreements entered into by the United States that reflect those policies. When such inconsistencies are identified by the OII, the Act provides that the relevant state law or regulation will be deemed preempted.

Much of the commentary from the June 10 hearing focused on the preemption of state law. Although the Act does not grant Treasury any general supervisory or regulatory authority, significant concerns exist regarding how the preemption provision will impact state regulatory authority. The National Association of Insurance Commissioners (“NAIC”), an organization representing state insurance regulators, stated its unqualified objection to any preemption of state regulatory authority over insurance matters. The NAIC also requested that the limitation on OII’s regulatory authority over insurers be expanded to cover the entire “business of insurance” including insurers, reinsurers, and insurance producers. In contrast, other entities, like the Reinsurance Association of America, expressed concern that the scope of preemption in the Act is not broad enough as proposed and urged the Financial Services Committee to expand the preemption authority to include all inconsistencies with Federal policy on international insurance matters.

In its current form, the Act provides no actual enforcement authority to the OII, but merely provides the ability to declare Federal preemption of a state law or regulation. As a result, the Act may create uncertainty for insurers. Any insurer acting in accordance with guidance from the OII may be left with a difficult choice: risk a state enforcement action or ignore the OII’s Federal preemption declaration.

¹ For a copy of our prior legal alert that discusses the Blueprint in more detail, please click [here](#).

However, for many insurers this new legislation is seen as a positive step toward a unified Federal approach to international insurance regulation that may cure some of the disadvantage U.S. insurance companies are facing in the global market.

Sutherland Regulatory Reform Task Force

In the wake of the recent credit crisis, regulators and Congress are accelerating their efforts to address the governmental oversight of U.S. financial markets. The current bailout and adverse economic conditions have assured action by Congress as it questions whether our existing regulatory regime can adequately maintain the competitiveness and integrity of our financial system and provide appropriate protection to investors and consumers. To help our clients respond to this ever-changing marketplace and evolving regulatory landscape, we formed a Regulatory Reform Task Force in June of this year that is made up of a diverse group of lawyers with experience in banking, securities, insurance, energy regulation and enforcement. Please click [here](#) for more information on Sutherland's Regulatory Reform Task Force.



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