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TO: The Council

FROM: Scott Sinder
Kate Jensen

RE: Congressman Duffy FIO Reform Bill

Representative Sean Duffy (R-WI)—a consistent champion of the state-based insurance system—has introduced legislation to reform the Federal Insurance Office (“FIO”). The House Financial Services Committee may hold a legislative hearing on the bill (H.R. 3861) as early as next week.

Generally, the bill would reorient FIO as an internationally-focused body (removing FIO’s authority/role with respect to domestic policy formulation) and would enhance the role of state regulators in all FIO functions. The bill also would constrain FIO’s personnel resources and take away some existing authorities, including, for instance, its authority to demand information from insurers and to determine whether state laws are preempted by covered agreements (with respect to the latter, assigning the FIO director a supporting role to the Treasury Secretary).

While the covered agreement provisions remain largely intact under the legislation, the “covered agreement” definition would be revised to prohibit any new prudential requirements for U.S. insurers under such agreements. Additionally, the bill allows for state participation in covered agreement negotiations.

Specific reforms included in the legislation are noted below.

International Focus

- Puts FIO within the Office of International Affairs;
- Removes FIO's role in consulting with the Treasury Secretary on major domestic insurance policy issues (leaving it to consult only on matters of international importance);

Enhanced State Involvement in FIO Functions

- Requires the Treasury Secretary to consult with state insurance commissioners when appointing the FIO director;
- Requires FIO to reach consensus with the states—rather than simply consulting with them—on “matters of international importance;”
- More generally, requires the FIO director to consult with state insurance regulators in carrying out all functions of the office;
- Clarifies—under provisions preserving states' existing regulatory authority—that neither the FIO director nor the Treasury Secretary have authority to participate in supervisory colleges or similar regulatory processes;

Covered Agreement Reforms

- Modifies the “covered agreement” definition such that agreements may not include any new prudential requirements for U.S. insurers;
- Requires that State insurance commissioners (or their designees) be included in meetings to negotiate covered agreements;

Limitation/Elimination of FIO's Current Authority

- Removes the catch-all authority of FIO to “perform such other related duties and authorities” as the Treasury Secretary may assign;
- Removes FIO's authority to develop policy on prudential aspects of international insurance matters, and replaces such authority with coordination of “Federal international insurance policy among Federal agencies and achieve [*sic*] consensus with the States;”
- Clarifies that the FIO director represents the Treasury Department, not the U.S. (as in current law), in the International Association of Insurance Supervisors;
- Provides that FIO will assist the Treasury Secretary in determining whether state laws are preempted by covered agreements (rather than the current structure, which assigns the authority to make such determinations directly to the FIO director);
- Permits FIO to enter into information-sharing agreements, but eliminates the rest of FIO's information gathering structure (which currently includes data collection and dissemination functions, and issuance of reports);
- Eliminates FIO's authority to require insurers to submit data/information (and its related subpoena power);

- Eliminates certain reports requirements, including the annual report to Congress on the U.S. and global insurance market, and the report on recommendations for modernizing and improving the U.S. insurance regulatory system; and

Constraints on FIO Resources

- Limits the Treasury Secretary's dedication of specific personnel to FIO to not more than 5 individuals (excluding the director).

We hope this is helpful. Please let us know if you have any questions.