

STROOCK

SPECIAL BULLETIN

Update on Significant Insurance Provisions of Dodd-Frank

July 22, 2010

On July 21, 2010, President Barack Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”)¹ into law. As detailed in our July 7, 2010 [Stroock Special Bulletin](#) “Significant Insurance Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act,”² the Act does not give the federal government a direct role in regulating the insurance industry in the United States, although it contains several provisions that will directly affect insurance regulation in the United States.

This **Stroock Special Bulletin** briefly highlights two aspects of the Act with significant implications for the insurance industry: (i) provisions intended to promote national uniformity in the surplus lines insurance and reinsurance markets and (ii) the creation of the Federal Insurance Office (“FIO”) within the Department of the Treasury to promote national coordination in the insurance industry.

Surplus Lines Insurance and Reinsurance Provisions

The Act attempts to streamline the current system of multiple and overlapping state regulatory authority in surplus lines insurance markets and, to a lesser extent, reinsurance markets. It will improve access to coverage from surplus lines insurers by large commercial purchasers through the following:

- providing that the placement of surplus lines insurance will be subject solely to the statutory and regulatory requirements of the insured’s home state;
- preempting certain state law requirements that restrict the ability of surplus lines brokers to place commercial insurance with surplus lines insurers;
- endorsing the NAIC’s eligibility requirements for surplus lines insurers as the nationwide standard; and

- preventing insureds from having to pay premium taxes for surplus lines insurance to more than one state.

In addition, the Act will eliminate regulatory inefficiencies in the reinsurance market by:

- prohibiting nondomiciliary states from denying credit for reinsurance when such credit is recognized by the domiciliary state of the ceding insurer;
- precluding nondomiciliary states from applying any requirements to reinsurance transactions that back risks in their states (except for those relating to the collection of taxes and assessments); and
- establishing the domiciliary state of the reinsurer as sole state responsible for regulating the financial solvency of the reinsurer.

These provisions will take effect on July 21, 2011.

Federal Insurance Office

The Act establishes the FIO to monitor and coordinate federal efforts on insurance issues that have national implications. Notably, the FIO will:

- negotiate “covered agreements”³ with foreign governments and regulatory authorities and potentially preempt state laws that conflict with such agreements; and
- report to Congress on how insurance regulation could be modernized, including (i) how to achieve uniformity in state regulation, (ii) whether federal regulation of some lines of insurance would be practicable, and (iii)

whether the federal government should become more involved in consumer protection.

Implications of the Act

It is likely to take some time before the insurance industry begins to feel the impact of the Act. As we noted in our previous [Stroock Special Bulletin](#), industry groups like the National Association of Surplus Lines Offices (“NAPSLO”) have approved of the Act’s surplus lines-related provisions, having long argued for uniform licensing standards. Many experts also believe that single-state compliance will reduce the sizable transaction costs associated with complex, multistate regulations. Additionally, the Act should make access for consumers to the surplus lines insurance market quicker and more efficient, and the payment of surplus lines premium taxes to the states less burdensome for both consumers and brokers.

The establishment of the FIO, however, has evoked a more critical reaction. For example, David Sampson, president and CEO of the Property Casualty Insurers Association of America, stated that “[d]uplicative federal oversight threatens to add costs to the insurance marketplace without corresponding benefits to the consumer. It also creates potential conflicts with existing state regulatory protections.”⁴

Although it remains to be seen what types of reporting obligations the FIO may ultimately choose to impose, the Act mitigates the risk that burdensome obligations will be placed on insurance companies by requiring that the FIO seek out data from state regulators and peer federal agencies before pursuing further reporting obligations.

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1. The full text of the Act is available at http://docs.house.gov/rules/finserv/111_hr4173_finsrvcr.pdf.
 2. Available at <http://www.stroock.com/SiteFiles/Pub957.pdf>.
 3. "Covered agreements" are agreements regarding prudential measures applicable to the business of insurance or reinsurance that achieve a level of protection for consumers that is substantially equivalent to the level of protection achieved under state insurance or reinsurance regulation.
 4. Bob Graham, "Financial Services Reform Bill Loosens Regulatory Grip on Insurance," *Insurance & Financial Advisor News* (June 25, 2010), available at <http://ifawebnews.com/2010/06/25/financial-services-reform-bill-loosens-regulatory-grip-on-insurance/>.

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