

1 **TITLE V—INSURANCE**
2 **Subtitle A—Federal Insurance**
3 **Office**

4 **SEC. 501. SHORT TITLE.**

5 This subtitle may be cited as the “Federal Insurance
6 Office Act of 2010”.

7 **SEC. 502. FEDERAL INSURANCE OFFICE.**

8 (a) ESTABLISHMENT OF OFFICE.—Subchapter I of
9 chapter 3 of subtitle I of title 31, United States Code,
10 is amended—

11 (1) by redesignating section 312 as section 315;

12 (2) by redesignating section 313 as section 312;

13 and

14 (3) by inserting after section 312 (as so redesi-
15 gnated) the following new sections:

16 **“SEC. 313. FEDERAL INSURANCE OFFICE.**

17 “(a) ESTABLISHMENT.—There is established within
18 the Department of the Treasury the Federal Insurance
19 Office.

20 “(b) LEADERSHIP.—The Office shall be headed by a
21 Director, who shall be appointed by the Secretary of the
22 Treasury. The position of Director shall be a career re-
23 served position in the Senior Executive Service, as that

1 position is defined under section 3132 of title 5, United
2 States Code.

3 “(c) FUNCTIONS.—

4 “(1) AUTHORITY PURSUANT TO DIRECTION OF
5 SECRETARY.—The Office, pursuant to the direction
6 of the Secretary, shall have the authority—

7 “(A) to monitor all aspects of the insur-
8 ance industry, including identifying issues or
9 gaps in the regulation of insurers that could
10 contribute to a systemic crisis in the insurance
11 industry or the United States financial system;

12 “(B) to monitor the extent to which tradi-
13 tionally underserved communities and con-
14 sumers, minorities (as such term is defined in
15 section 1204(c) of the Financial Institutions
16 Reform, Recovery, and Enforcement Act of
17 1989 (12 U.S.C. 1811 note)), and low- and
18 moderate-income persons have access to afford-
19 able insurance products regarding all lines of
20 insurance, except health insurance;

21 “(C) to recommend to the Financial Sta-
22 bility Oversight Council that it designate an in-
23 surer, including the affiliates of such insurer, as
24 an entity subject to regulation as a nonbank fi-
25 nancial company supervised by the Board of

1 Governors pursuant to title I of the Restoring
2 American Financial Stability Act of 2010;

3 “(D) to assist the Secretary in admin-
4 istering the Terrorism Insurance Program es-
5 tablished in the Department of the Treasury
6 under the Terrorism Risk Insurance Act of
7 2002 (15 U.S.C. 6701 note);

8 “(E) to coordinate Federal efforts and de-
9 velop Federal policy on prudential aspects of
10 international insurance matters, including rep-
11 resenting the United States, as appropriate, in
12 the International Association of Insurance Su-
13 pervisors (or a successor entity) and assisting
14 the Secretary in negotiating covered agreements
15 (as such term is defined in subsection (r));

16 “(F) to determine, in accordance with sub-
17 section (f), whether State insurance measures
18 are preempted by covered agreements;

19 “(G) to consult with the States (including
20 State insurance regulators) regarding insurance
21 matters of national importance and prudential
22 insurance matters of international importance;
23 and

1 “(H) to perform such other related duties
2 and authorities as may be assigned to the Of-
3 fice by the Secretary.

4 “(2) ADVISORY FUNCTIONS.—The Office shall
5 advise the Secretary on major domestic and pruden-
6 tial international insurance policy issues.

7 “(3) ADVISORY CAPACITY ON COUNCIL.—The
8 Director shall serve in an advisory capacity on the
9 Financial Stability Oversight Council established
10 under the Financial Stability Act of 2010.

11 “(d) SCOPE.—The authority of the Office shall ex-
12 tend to all lines of insurance except—

13 “(1) health insurance, as determined by the
14 Secretary in coordination with the Secretary of
15 Health and Human Services based on section 2791
16 of the Public Health Service Act (42 U.S.C. 300gg–
17 91);

18 “(2) long-term care insurance, except long-term
19 care insurance that is included with life or annuity
20 insurance components, as determined by the Sec-
21 retary in coordination with the Secretary of Health
22 and Human Services, and in the case of long-term
23 care insurance that is included with such compo-
24 nents, the Secretary shall coordinate with the Sec-

1 retary of Health and Human Services in performing
2 the functions of the Office; and

3 “(3) crop insurance, as established by the Fed-
4 eral Crop Insurance Act (7 U.S.C. 1501 et seq.).

5 “(e) GATHERING OF INFORMATION.—

6 “(1) IN GENERAL.—In carrying out the func-
7 tions required under subsection (c), the Office
8 may—

9 “(A) receive and collect data and informa-
10 tion on and from the insurance industry and in-
11 surers;

12 “(B) enter into information-sharing agree-
13 ments;

14 “(C) analyze and disseminate data and in-
15 formation; and

16 “(D) issue reports regarding all lines of in-
17 surance except health insurance.

18 “(2) COLLECTION OF INFORMATION FROM IN-
19 SURERS AND AFFILIATES.—

20 “(A) IN GENERAL.—Except as provided in
21 paragraph (3), the Office may require an in-
22 surer, or any affiliate of an insurer, to submit
23 such data or information as the Office may rea-
24 sonably require in carrying out the functions
25 described under subsection (c).

1 “(B) RULE OF CONSTRUCTION.—Notwith-
2 standing any other provision of this section, for
3 purposes of subparagraph (A), the term ‘in-
4 surer’ means any entity that writes insurance
5 or reinsures risks and issues contracts or poli-
6 cies in 1 or more States.

7 “(3) EXCEPTION FOR SMALL INSURERS.—Para-
8 graph (2) shall not apply with respect to any insurer
9 or affiliate thereof that meets a minimum size
10 threshold that the Office may establish, whether by
11 order or rule.

12 “(4) ADVANCE COORDINATION.—Before col-
13 lecting any data or information under paragraph (2)
14 from an insurer, or affiliate of an insurer, the Office
15 shall coordinate with each relevant Federal agency
16 and State insurance regulator (or other relevant
17 Federal or State regulatory agency, if any, in the
18 case of an affiliate of an insurer) and any publicly
19 available sources to determine if the information to
20 be collected is available from, and may be obtained
21 in a timely manner by, such Federal agency or State
22 insurance regulator, individually or collectively, other
23 regulatory agency, or publicly available sources. If
24 the Director determines that such data or informa-
25 tion is available, and may be obtained in a timely

1 manner, from such an agency, regulator, regulatory
2 agency, or source, the Director shall obtain the data
3 or information from such agency, regulator, regu-
4 latory agency, or source. If the Director determines
5 that such data or information is not so available, the
6 Director may collect such data or information from
7 an insurer (or affiliate) only if the Director complies
8 with the requirements of subchapter I of chapter 35
9 of title 44, United States Code (relating to Federal
10 information policy; commonly known as the Paper-
11 work Reduction Act), in collecting such data or in-
12 formation. Notwithstanding any other provision of
13 law, each such relevant Federal agency and State in-
14 surance regulator or other Federal or State regu-
15 latory agency is authorized to provide to the Office
16 such data or information.

17 “(5) CONFIDENTIALITY.—

18 “(A) RETENTION OF PRIVILEGE.—The
19 submission of any nonpublicly available data
20 and information to the Office under this sub-
21 section shall not constitute a waiver of, or oth-
22 erwise affect, any privilege arising under Fed-
23 eral or State law (including the rules of any
24 Federal or State court) to which the data or in-
25 formation is otherwise subject.

1 “(B) CONTINUED APPLICATION OF PRIOR
2 CONFIDENTIALITY AGREEMENTS.—Any require-
3 ment under Federal or State law to the extent
4 otherwise applicable, or any requirement pursu-
5 ant to a written agreement in effect between
6 the original source of any nonpublicly available
7 data or information and the source of such data
8 or information to the Office, regarding the pri-
9 vacy or confidentiality of any data or informa-
10 tion in the possession of the source to the Of-
11 fice, shall continue to apply to such data or in-
12 formation after the data or information has
13 been provided pursuant to this subsection to the
14 Office.

15 “(C) INFORMATION-SHARING AGREE-
16 MENT.—Any data or information obtained by
17 the Office may be made available to State in-
18 surance regulators, individually or collectively,
19 through an information-sharing agreement
20 that—

21 “(i) shall comply with applicable Fed-
22 eral law; and

23 “(ii) shall not constitute a waiver of,
24 or otherwise affect, any privilege under
25 Federal or State law (including the rules

1 of any Federal or State court) to which the
2 data or information is otherwise subject.

3 “(D) AGENCY DISCLOSURE REQUIRE-
4 MENTS.—Section 552 of title 5, United States
5 Code, shall apply to any data or information
6 submitted to the Office by an insurer or an af-
7 filiate of an insurer.

8 “(6) SUBPOENAS AND ENFORCEMENT.—The
9 Director shall have the power to require by subpoena
10 the production of the data or information requested
11 under paragraph (2), but only upon a written find-
12 ing by the Director that such data or information is
13 required to carry out the functions described under
14 subsection (c) and that the Office has coordinated
15 with such regulator or agency as required under
16 paragraph (4). Subpoenas shall bear the signature of
17 the Director and shall be served by any person or
18 class of persons designated by the Director for that
19 purpose. In the case of contumacy or failure to obey
20 a subpoena, the subpoena shall be enforceable by
21 order of any appropriate district court of the United
22 States. Any failure to obey the order of the court
23 may be punished by the court as a contempt of
24 court.

1 “(f) PREEMPTION OF STATE INSURANCE MEAS-
2 URES.—

3 “(1) STANDARD.—A State insurance measure
4 shall be preempted pursuant to this section or sec-
5 tion 314 if, and only to the extent that the Director
6 determines, in accordance with this subsection, that
7 the measure—

8 “(A) results in less favorable treatment of
9 a non-United States insurer domiciled in a for-
10 eign jurisdiction that is subject to a covered
11 agreement than a United States insurer domi-
12 ciled, licensed, or otherwise admitted in that
13 State; and

14 “(B) is inconsistent with a covered agree-
15 ment.

16 “(2) DETERMINATION.—

17 “(A) NOTICE OF POTENTIAL INCONSIST-
18 ENCY.—Before making any determination
19 under paragraph (1), the Director shall—

20 “(i) notify and consult with the appro-
21 priate State regarding any potential incon-
22 sistency or preemption;

23 “(ii) notify and consult with the
24 United States Trade Representative re-

1 regarding any potential inconsistency or pre-
2 emptio

3 “(iii) cause to be published in the
4 Federal Register notice of the issue re-
5 garding the potential inconsistency or pre-
6 emptio, including a description of each
7 State insurance measure at issue and any
8 applicable covered agreement;

9 “(iv) provide interested parties a rea-
10 sonable opportunity to submit written com-
11 ments to the Office; and

12 “(v) consider any comments received.

13 “(B) SCOPE OF REVIEW.—For purposes of
14 this subsection, any determination of the Direc-
15 tor regarding State insurance measures, and
16 any preemption under paragraph (1) as a result
17 of such determination, shall be limited to the
18 subject matter contained within the covered
19 agreement involved and shall achieve a level of
20 protection for insurance or reinsurance con-
21 sumers that is substantially equivalent to the
22 level of protection achieved under State insur-
23 ance or reinsurance regulation.

1 “(C) NOTICE OF DETERMINATION OF IN-
2 CONSISTENCY.—Upon making any determina-
3 tion under paragraph (1), the Director shall—

4 “(i) notify the appropriate State of
5 the determination and the extent of the in-
6 consistency;

7 “(ii) establish a reasonable period of
8 time, which shall not be less than 30 days,
9 before the determination shall become ef-
10 fective; and

11 “(iii) notify the Committees on Finan-
12 cial Services and Ways and Means of the
13 House of Representatives and the Commit-
14 tees on Banking, Housing, and Urban Af-
15 fairs and Finance of the Senate.

16 “(3) NOTICE OF EFFECTIVENESS.—Upon the
17 conclusion of the period referred to in paragraph
18 (2)(C)(ii), if the basis for such determination still
19 exists, the determination shall become effective and
20 the Director shall—

21 “(A) cause to be published a notice in the
22 Federal Register that the preemption has be-
23 come effective, as well as the effective date; and

24 “(B) notify the appropriate State.

1 “(4) LIMITATION.—No State may enforce a
2 State insurance measure to the extent that such
3 measure has been preempted under this subsection.

4 “(g) APPLICABILITY OF ADMINISTRATIVE PROCE-
5 DURES ACT.—Determinations of inconsistency made pur-
6 suant to subsection (f)(2) shall be subject to the applicable
7 provisions of subchapter II of chapter 5 of title 5, United
8 States Code (relating to administrative procedure), and
9 chapter 7 of such title (relating to judicial review), except
10 that in any action for judicial review of a determination
11 of inconsistency, the court shall determine the matter de
12 novo.

13 “(h) REGULATIONS, POLICIES, AND PROCEDURES.—
14 The Secretary may issue orders, regulations, policies, and
15 procedures to implement this section.

16 “(i) CONSULTATION.—The Director shall consult
17 with State insurance regulators, individually or collec-
18 tively, to the extent the Director determines appropriate,
19 in carrying out the functions of the Office.

20 “(j) SAVINGS PROVISIONS.—Nothing in this section
21 shall—

22 “(1) preempt—

23 “(A) any State insurance measure that
24 governs any insurer’s rates, premiums, under-
25 writing, or sales practices;

1 “(B) any State coverage requirements for
2 insurance;

3 “(C) the application of the antitrust laws
4 of any State to the business of insurance; or

5 “(D) any State insurance measure gov-
6 erning the capital or solvency of an insurer, ex-
7 cept to the extent that such State insurance
8 measure results in less favorable treatment of a
9 non-United State insurer than a United States
10 insurer;

11 “(2) be construed to alter, amend, or limit any
12 provision of the Consumer Financial Protection
13 Agency Act of 2010; or

14 “(3) affect the preemption of any State insur-
15 ance measure otherwise inconsistent with and pre-
16 empted by Federal law.

17 “(k) RETENTION OF EXISTING STATE REGULATORY
18 AUTHORITY.—Nothing in this section or section 314 shall
19 be construed to establish or provide the Office or the De-
20 partment of the Treasury with general supervisory or reg-
21 ulatory authority over the business of insurance.

22 “(l) RETENTION OF AUTHORITY OF FEDERAL FI-
23 NANCIAL REGULATORY AGENCIES.—Nothing in this sec-
24 tion or section 314 shall be construed to limit the author-
25 ity of any Federal financial regulatory agency, including

1 the authority to develop and coordinate policy, negotiate,
2 and enter into agreements with foreign governments, au-
3 thorities, regulators, and multinational regulatory commit-
4 tees and to preempt State measures to affect uniformity
5 with international regulatory agreements.

6 “(m) RETENTION OF AUTHORITY OF UNITED
7 STATES TRADE REPRESENTATIVE.—Nothing in this sec-
8 tion or section 314 shall be construed to affect the author-
9 ity of the Office of the United States Trade Representative
10 pursuant to section 141 of the Trade Act of 1974 (19
11 U.S.C. 2171) or any other provision of law, including au-
12 thority over the development and coordination of United
13 States international trade policy and the administration
14 of the United States trade agreements program.

15 “(n) ANNUAL REPORTS TO CONGRESS.—

16 “(1) SECTION 313(f) REPORTS.—Beginning
17 September 30, 2011, the Director shall submit a re-
18 port on or before September 30 of each calendar
19 year to the President and to the Committees on Fi-
20 nancial Services and Ways and Means of the House
21 of Representatives and the Committees on Banking,
22 Housing, and Urban Affairs and Finance of the
23 Senate on any actions taken by the Office pursuant
24 to subsection (f) (regarding preemption of incon-
25 sistent State insurance measures).

1 “(2) INSURANCE INDUSTRY.—Beginning Sep-
2 tember 30, 2011, the Director shall submit a report
3 on or before September 30 of each calendar year to
4 the President and to the Committee on Financial
5 Services of the House of Representatives and the
6 Committee on Banking, Housing, and Urban Affairs
7 of the Senate on the insurance industry and any
8 other information as deemed relevant by the Direc-
9 tor or requested by such Committees.

10 “(o) REPORTS ON U.S. AND GLOBAL REINSURANCE
11 MARKET.—The Director shall submit to the Committee
12 on Financial Services of the House of Representatives and
13 the Committee on Banking, Housing, and Urban Affairs
14 of the Senate—

15 “(1) a report received not later than September
16 30, 2012, describing the breadth and scope of the
17 global reinsurance market and the critical role such
18 market plays in supporting insurance in the United
19 States; and

20 “(2) a report received not later than January 1,
21 2013, and updated not later than January 1, 2015,
22 describing the impact of part II of the Nonadmitted
23 and Reinsurance Reform Act of 2010 on the ability
24 of State regulators to access reinsurance information
25 for regulated companies in their jurisdictions.

1 “(p) STUDY AND REPORT ON REGULATION OF IN-
2 SURANCE.—

3 “(1) IN GENERAL.—Not later than 18 months
4 after the date of enactment of this section, the Di-
5 rector shall conduct a study and submit a report to
6 Congress on how to modernize and improve the sys-
7 tem of insurance regulation in the United States.

8 “(2) CONSIDERATIONS.—The study and report
9 required under paragraph (1) shall be based on and
10 guided by the following considerations:

11 “(A) Systemic risk regulation with respect
12 to insurance.

13 “(B) Capital standards and the relation-
14 ship between capital allocation and liabilities,
15 including standards relating to liquidity and du-
16 ration risk.

17 “(C) Consumer protection for insurance
18 products and practices, including gaps in State
19 regulation.

20 “(D) The degree of national uniformity of
21 State insurance regulation.

22 “(E) The regulation of insurance compa-
23 nies and affiliates on a consolidated basis.

24 “(F) International coordination of insur-
25 ance regulation.

1 “(3) ADDITIONAL FACTORS.—The study and
2 report required under paragraph (1) shall also exam-
3 ine the following factors:

4 “(A) The costs and benefits of potential
5 Federal regulation of insurance across various
6 lines of insurance (except health insurance).

7 “(B) The feasibility of regulating only cer-
8 tain lines of insurance at the Federal level,
9 while leaving other lines of insurance to be reg-
10 ulated at the State level.

11 “(C) The ability of any potential Federal
12 regulation or Federal regulators to eliminate or
13 minimize regulatory arbitrage.

14 “(D) The impact that developments in the
15 regulation of insurance in foreign jurisdictions
16 might have on the potential Federal regulation
17 of insurance.

18 “(E) The ability of any potential Federal
19 regulation or Federal regulator to provide ro-
20 bust consumer protection for policyholders.

21 “(F) The potential consequences of sub-
22 jecting insurance companies to a Federal reso-
23 lution authority, including the effects of any
24 Federal resolution authority—

1 “(i) on the operation of State insur-
2 ance guaranty fund systems, including the
3 loss of guaranty fund coverage if an insur-
4 ance company is subject to a Federal reso-
5 lution authority;

6 “(ii) on policyholder protection, in-
7 cluding the loss of the priority status of
8 policyholder claims over other unsecured
9 general creditor claims;

10 “(iii) in the case of life insurance
11 companies, on the loss of the special status
12 of separate account assets and separate ac-
13 count liabilities; and

14 “(iv) on the international competitive-
15 ness of insurance companies.

16 “(G) Such other factors as the Director
17 determines necessary or appropriate, consistent
18 with the principles set forth in paragraph (2).

19 “(4) REQUIRED RECOMMENDATIONS.—The
20 study and report required under paragraph (1) shall
21 also contain any legislative, administrative, or regu-
22 latory recommendations, as the Director determines
23 appropriate, to carry out or effectuate the findings
24 set forth in such report.

1 “(B) relates to the recognition of pruden-
2 tial measures with respect to the business of in-
3 surance or reinsurance that achieves a level of
4 protection for insurance or reinsurance con-
5 sumers that is substantially equivalent to the
6 level of protection achieved under State insur-
7 ance or reinsurance regulation.

8 “(3) INSURER.—The term ‘insurer’ means any
9 person engaged in the business of insurance, includ-
10 ing reinsurance.

11 “(4) FEDERAL FINANCIAL REGULATORY AGEN-
12 CY.—The term ‘Federal financial regulatory agency’
13 means the Department of the Treasury, the Board
14 of Governors of the Federal Reserve System, the Of-
15 fice of the Comptroller of the Currency, the Office
16 of Thrift Supervision, the Securities and Exchange
17 Commission, the Commodity Futures Trading Com-
18 mission, the Federal Deposit Insurance Corporation,
19 the Federal Housing Finance Agency, or the Na-
20 tional Credit Union Administration.

21 “(5) NON-UNITED STATES INSURER.—The term
22 ‘non-United States insurer’ means an insurer that is
23 organized under the laws of a jurisdiction other than
24 a State, but does not include any United States
25 branch of such an insurer.

1 “(6) OFFICE.—The term ‘Office’ means the
2 Federal Insurance Office established by this section.

3 “(7) STATE INSURANCE MEASURE.—The term
4 ‘State insurance measure’ means any State law, reg-
5 ulation, administrative ruling, bulletin, guideline, or
6 practice relating to or affecting prudential measures
7 applicable to insurance or reinsurance.

8 “(8) STATE INSURANCE REGULATOR.—The
9 term ‘State insurance regulator’ means any State
10 regulatory authority responsible for the supervision
11 of insurers.

12 “(9) SUBSTANTIALLY EQUIVALENT TO THE
13 LEVEL OF PROTECTION ACHIEVED.—The term ‘sub-
14 stantially equivalent to the level of protection
15 achieved’ means the prudential measures of a for-
16 eign government, authority, or regulatory entity
17 achieve a similar outcome in consumer protection as
18 the outcome achieved under State insurance or rein-
19 surance regulation.

20 “(10) UNITED STATES INSURER.—The term
21 ‘United States insurer’ means—

22 “(A) an insurer that is organized under
23 the laws of a State; or

24 “(B) a United States branch of a non-
25 United States insurer.

1 “(s) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated for the Office for each
3 fiscal year such sums as may be necessary.

4 **“SEC. 314. COVERED AGREEMENTS.**

5 “(a) AUTHORITY.—The Secretary and the United
6 States Trade Representative are authorized, jointly, to ne-
7 gotiate and enter into covered agreements on behalf of the
8 United States.

9 “(b) REQUIREMENTS FOR CONSULTATION WITH
10 CONGRESS.—

11 “(1) IN GENERAL.—Before initiating negotia-
12 tions to enter into a covered agreement under sub-
13 section (a), during such negotiations, and before en-
14 tering into any such agreement, the Secretary and
15 the United States Trade Representative shall jointly
16 consult with the Committee on Financial Services
17 and the Committee on Ways and Means of the
18 House of Representatives and the Committee on
19 Banking, Housing, and Urban Affairs and the Com-
20 mittee on Finance of the Senate.

21 “(2) SCOPE.—The consultation described in
22 paragraph (1) shall include consultation with respect
23 to—

24 “(A) the nature of the agreement;

1 “(B) how and to what extent the agree-
2 ment will achieve the applicable purposes, poli-
3 cies, priorities, and objectives of section 313
4 and this section; and

5 “(C) the implementation of the agreement,
6 including the general effect of the agreement on
7 existing State laws.

8 “(c) SUBMISSION AND LAYOVER PROVISIONS.—A
9 covered agreement under subsection (a) may enter into
10 force with respect to the United States only if—

11 “(1) the Secretary and the United States Trade
12 Representative jointly submit to the congressional
13 committees specified in subsection (b)(1), on a day
14 on which both Houses of Congress are in session, a
15 copy of the final legal text of the agreement; and

16 “(2) a period of 90 calendar days beginning on
17 the date on which the copy of the final legal text of
18 the agreement is submitted to the congressional
19 committees under paragraph (1) has expired.”.

20 (b) DUTIES OF SECRETARY.—Section 321(a) of title
21 31, United States Code, is amended—

22 (1) in paragraph (7), by striking “; and” and
23 inserting a semicolon;

24 (2) in paragraph (8)(C), by striking the period
25 at the end and inserting “; and”; and

1 **PART I—NONADMITTED INSURANCE**

2 **SEC. 521. REPORTING, PAYMENT, AND ALLOCATION OF**
3 **PREMIUM TAXES.**

4 (a) HOME STATE'S EXCLUSIVE AUTHORITY.—No
5 State other than the home State of an insured may require
6 any premium tax payment for nonadmitted insurance.

7 (b) ALLOCATION OF NONADMITTED PREMIUM
8 TAXES.—

9 (1) IN GENERAL.—The States may enter into a
10 compact or otherwise establish procedures to allocate
11 among the States the premium taxes paid to an in-
12 sured's home State described in subsection (a).

13 (2) EFFECTIVE DATE.—Except as expressly
14 otherwise provided in such compact or other proce-
15 dures, any such compact or other procedures—

16 (A) if adopted on or before the expiration
17 of the 330-day period that begins on the date
18 of the enactment of this subtitle, shall apply to
19 any premium taxes that, on or after such date
20 of enactment, are required to be paid to any
21 State that is subject to such compact or proce-
22 dures; and

23 (B) if adopted after the expiration of such
24 330-day period, shall apply to any premium
25 taxes that, on or after January 1 of the first
26 calendar year that begins after the expiration of

1 such 330-day period, are required to be paid to
2 any State that is subject to such compact or
3 procedures.

4 (3) REPORT.—Upon the expiration of the 330-
5 day period referred to in paragraph (2), the NAIC
6 may submit a report to the Committee on Financial
7 Services and the Committee on the Judiciary of the
8 House of Representatives and the Committee on
9 Banking, Housing, and Urban Affairs of the Senate
10 identifying and describing any compact or other pro-
11 cedures for allocation among the States of premium
12 taxes that have been adopted during such period by
13 any States.

14 (4) NATIONWIDE SYSTEM.—The Congress in-
15 tends that each State adopt nationwide uniform re-
16 quirements, forms, and procedures, such as an inter-
17 state compact, that provide for the reporting, pay-
18 ment, collection, and allocation of premium taxes for
19 nonadmitted insurance consistent with this section.

20 (c) ALLOCATION BASED ON TAX ALLOCATION RE-
21 PORT.—To facilitate the payment of premium taxes
22 among the States, an insured's home State may require
23 surplus lines brokers and insureds who have independently
24 procured insurance to annually file tax allocation reports
25 with the insured's home State detailing the portion of the

1 nonadmitted insurance policy premium or premiums at-
2 tributable to properties, risks, or exposures located in each
3 State. The filing of a nonadmitted insurance tax allocation
4 report and the payment of tax may be made by a person
5 authorized by the insured to act as its agent.

6 **SEC. 522. REGULATION OF NONADMITTED INSURANCE BY**
7 **INSURED'S HOME STATE.**

8 (a) HOME STATE AUTHORITY.—Except as otherwise
9 provided in this section, the placement of nonadmitted in-
10 surance shall be subject to the statutory and regulatory
11 requirements solely of the insured's home State.

12 (b) BROKER LICENSING.—No State other than an in-
13 sured's home State may require a surplus lines broker to
14 be licensed in order to sell, solicit, or negotiate non-
15 admitted insurance with respect to such insured.

16 (c) ENFORCEMENT PROVISION.—With respect to sec-
17 tion 521 and subsections (a) and (b) of this section, any
18 law, regulation, provision, or action of any State that ap-
19 plies or purports to apply to nonadmitted insurance sold
20 to, solicited by, or negotiated with an insured whose home
21 State is another State shall be preempted with respect to
22 such application.

23 (d) WORKERS' COMPENSATION EXCEPTION.—This
24 section may not be construed to preempt any State law,
25 rule, or regulation that restricts the placement of workers'

1 compensation insurance or excess insurance for self-fund-
2 ed workers' compensation plans with a nonadmitted in-
3 surer.

4 **SEC. 523. PARTICIPATION IN NATIONAL PRODUCER DATA-**
5 **BASE.**

6 After the expiration of the 2-year period beginning
7 on the date of the enactment of this subtitle, a State may
8 not collect any fees relating to licensing of an individual
9 or entity as a surplus lines broker in the State unless the
10 State has in effect at such time laws or regulations that
11 provide for participation by the State in the national in-
12 surance producer database of the NAIC, or any other
13 equivalent uniform national database, for the licensure of
14 surplus lines brokers and the renewal of such licenses.

15 **SEC. 524. UNIFORM STANDARDS FOR SURPLUS LINES ELI-**
16 **GIBILITY.**

17 A State may not—

18 (1) impose eligibility requirements on, or other-
19 wise establish eligibility criteria for, nonadmitted in-
20 surers domiciled in a United States jurisdiction, ex-
21 cept in conformance with such requirements and cri-
22 teria in sections 5A(2) and 5C(2)(a) of the Non-Ad-
23 mitted Insurance Model Act, unless the State has
24 adopted nationwide uniform requirements, forms,
25 and procedures developed in accordance with section

1 521(b) of this subtitle that include alternative na-
2 tionwide uniform eligibility requirements; or

3 (2) prohibit a surplus lines broker from placing
4 nonadmitted insurance with, or procuring non-
5 admitted insurance from, a nonadmitted insurer
6 domiciled outside the United States that is listed on
7 the Quarterly Listing of Alien Insurers maintained
8 by the International Insurers Department of the
9 NAIC.

10 **SEC. 525. STREAMLINED APPLICATION FOR COMMERCIAL**
11 **PURCHASERS.**

12 A surplus lines broker seeking to procure or place
13 nonadmitted insurance in a State for an exempt commer-
14 cial purchaser shall not be required to satisfy any State
15 requirement to make a due diligence search to determine
16 whether the full amount or type of insurance sought by
17 such exempt commercial purchaser can be obtained from
18 admitted insurers if—

19 (1) the broker procuring or placing the surplus
20 lines insurance has disclosed to the exempt commer-
21 cial purchaser that such insurance may or may not
22 be available from the admitted market that may pro-
23 vide greater protection with more regulatory over-
24 sight; and

1 ability of coverage available in both the admitted
2 and nonadmitted insurance markets;

3 (4) the extent to which insurance companies
4 and insurance holding companies that provide both
5 admitted and nonadmitted insurance have experi-
6 enced shifts in the volume of business between ad-
7 mitted and nonadmitted insurance; and

8 (5) the extent to which there has been a change
9 in the number of individuals who have nonadmitted
10 insurance policies, the type of coverage provided
11 under such policies, and whether such coverage is
12 available in the admitted insurance market.

13 (c) CONSULTATION WITH NAIC.—In conducting the
14 study under this section, the Comptroller General shall
15 consult with the NAIC.

16 (d) REPORT.—The Comptroller General shall com-
17 plete the study under this section and submit a report to
18 the Committee on Banking, Housing, and Urban Affairs
19 of the Senate and the Committee on Financial Services
20 of the House of Representatives regarding the findings of
21 the study not later than 30 months after the effective date
22 of this subtitle.

23 **SEC. 527. DEFINITIONS.**

24 For purposes of this part, the following definitions
25 shall apply:

1 (1) ADMITTED INSURER.—The term “admitted
2 insurer” means, with respect to a State, an insurer
3 licensed to engage in the business of insurance in
4 such State.

5 (2) AFFILIATE.—The term “affiliate” means,
6 with respect to an insured, any entity that controls,
7 is controlled by, or is under common control with the
8 insured.

9 (3) AFFILIATED GROUP.—The term “affiliated
10 group” means any group of entities that are all af-
11 filiated.

12 (4) CONTROL.—An entity has “control” over
13 another entity if—

14 (A) the entity directly or indirectly or act-
15 ing through 1 or more other persons owns, con-
16 trols, or has the power to vote 25 percent or
17 more of any class of voting securities of the
18 other entity; or

19 (B) the entity controls in any manner the
20 election of a majority of the directors or trust-
21 ees of the other entity.

22 (5) EXEMPT COMMERCIAL PURCHASER.—The
23 term “exempt commercial purchaser” means any
24 person purchasing commercial insurance that, at the
25 time of placement, meets the following requirements:

1 (A) The person employs or retains a quali-
2 fied risk manager to negotiate insurance cov-
3 erage.

4 (B) The person has paid aggregate nation-
5 wide commercial property and casualty insur-
6 ance premiums in excess of \$100,000 in the im-
7 mediately preceding 12 months.

8 (C)(i) The person meets at least 1 of the
9 following criteria:

10 (I) The person possesses a net worth
11 in excess of \$20,000,000, as such amount
12 is adjusted pursuant to clause (ii).

13 (II) The person generates annual rev-
14 enues in excess of \$50,000,000, as such
15 amount is adjusted pursuant to clause (ii).

16 (III) The person employs more than
17 500 full-time or full-time equivalent em-
18 ployees per individual insured or is a mem-
19 ber of an affiliated group employing more
20 than 1,000 employees in the aggregate.

21 (IV) The person is a not-for-profit or-
22 ganization or public entity generating an-
23 nual budgeted expenditures of at least
24 \$30,000,000, as such amount is adjusted
25 pursuant to clause (ii).

1 (V) The person is a municipality with
2 a population in excess of 50,000 persons.

3 (ii) Effective on the fifth January 1 occur-
4 ring after the date of the enactment of this sub-
5 title and each fifth January 1 occurring there-
6 after, the amounts in subclauses (I), (II), and
7 (IV) of clause (i) shall be adjusted to reflect the
8 percentage change for such 5-year period in the
9 Consumer Price Index for All Urban Con-
10 sumers published by the Bureau of Labor Sta-
11 tistics of the Department of Labor.

12 (6) HOME STATE.—

13 (A) IN GENERAL.—Except as provided in
14 subparagraph (B), the term “home State”
15 means, with respect to an insured—

16 (i) the State in which an insured
17 maintains its principal place of business or,
18 in the case of an individual, the individ-
19 ual’s principal residence; or

20 (ii) if 100 percent of the insured risk
21 is located out of the State referred to in
22 clause (i), the State to which the greatest
23 percentage of the insured’s taxable pre-
24 mium for that insurance contract is allo-
25 cated.

1 (B) AFFILIATED GROUPS.—If more than 1
2 insured from an affiliated group are named in-
3 sureds on a single nonadmitted insurance con-
4 tract, the term “home State” means the home
5 State, as determined pursuant to subparagraph
6 (A), of the member of the affiliated group that
7 has the largest percentage of premium attrib-
8 uted to it under such insurance contract.

9 (7) INDEPENDENTLY PROCURED INSURANCE.—
10 The term “independently procured insurance”
11 means insurance procured directly by an insured
12 from a nonadmitted insurer.

13 (8) NAIC.—The term “NAIC” means the Na-
14 tional Association of Insurance Commissioners or
15 any successor entity.

16 (9) NONADMITTED INSURANCE.—The term
17 “nonadmitted insurance” means any property and
18 casualty insurance permitted to be placed directly or
19 through a surplus lines broker with a nonadmitted
20 insurer eligible to accept such insurance.

21 (10) NON-ADMITTED INSURANCE MODEL
22 ACT.—The term “Non-Admitted Insurance Model
23 Act” means the provisions of the Non-Admitted In-
24 surance Model Act, as adopted by the NAIC on Au-
25 gust 3, 1994, and amended on September 30, 1996,

1 December 6, 1997, October 2, 1999, and June 8,
2 2002.

3 (11) NONADMITTED INSURER.—The term
4 “nonadmitted insurer”—

5 (A) means, with respect to a State, an in-
6 surer not licensed to engage in the business of
7 insurance in such State; but

8 (B) does not include a risk retention
9 group, as that term is defined in section 2(a)(4)
10 of the Liability Risk Retention Act of 1986 (15
11 U.S.C. 3901(a)(4)).

12 (12) PREMIUM TAX.—The term “premium tax”
13 means, with respect to surplus lines or independently
14 procured insurance coverage, any tax, fee, assess-
15 ment, or other charge imposed by a government en-
16 tity directly or indirectly based on any payment
17 made as consideration for an insurance contract for
18 such insurance, including premium deposits, assess-
19 ments, registration fees, and any other compensation
20 given in consideration for a contract of insurance.

21 (13) QUALIFIED RISK MANAGER.—The term
22 “qualified risk manager” means, with respect to a
23 policyholder of commercial insurance, a person who
24 meets all of the following requirements:

1 (A) The person is an employee of, or third-
2 party consultant retained by, the commercial
3 policyholder.

4 (B) The person provides skilled services in
5 loss prevention, loss reduction, or risk and in-
6 surance coverage analysis, and purchase of in-
7 surance.

8 (C) The person—

9 (i)(I) has a bachelor's degree or high-
10 er from an accredited college or university
11 in risk management, business administra-
12 tion, finance, economics, or any other field
13 determined by a State insurance commis-
14 sioner or other State regulatory official or
15 entity to demonstrate minimum com-
16 petence in risk management; and

17 (II)(aa) has 3 years of experience in
18 risk financing, claims administration, loss
19 prevention, risk and insurance analysis, or
20 purchasing commercial lines of insurance;
21 or

22 (bb) has—

23 (AA) a designation as a Char-
24 tered Property and Casualty Under-
25 writer (in this subparagraph referred

1 to as “CPCU”) issued by the Amer-
2 ican Institute for CPCU/Insurance In-
3 stitute of America;

4 (BB) a designation as an Asso-
5 ciate in Risk Management (ARM)
6 issued by the American Institute for
7 CPCU/Insurance Institute of America;

8 (CC) a designation as Certified
9 Risk Manager (CRM) issued by the
10 National Alliance for Insurance Edu-
11 cation & Research;

12 (DD) a designation as a RIMS
13 Fellow (RF) issued by the Global Risk
14 Management Institute; or

15 (EE) any other designation, cer-
16 tification, or license determined by a
17 State insurance commissioner or other
18 State insurance regulatory official or
19 entity to demonstrate minimum com-
20 petency in risk management;

21 (ii)(I) has at least 7 years of experi-
22 ence in risk financing, claims administra-
23 tion, loss prevention, risk and insurance
24 coverage analysis, or purchasing commer-
25 cial lines of insurance; and

1 (II) has any 1 of the designations
2 specified in subitems (AA) through (EE)
3 of clause (i)(II)(bb);

4 (iii) has at least 10 years of experi-
5 ence in risk financing, claims administra-
6 tion, loss prevention, risk and insurance
7 coverage analysis, or purchasing commer-
8 cial lines of insurance; or

9 (iv) has a graduate degree from an
10 accredited college or university in risk
11 management, business administration, fi-
12 nance, economics, or any other field deter-
13 mined by a State insurance commissioner
14 or other State regulatory official or entity
15 to demonstrate minimum competence in
16 risk management.

17 (14) REINSURANCE.—The term “reinsurance”
18 means the assumption by an insurer of all or part
19 of a risk undertaken originally by another insurer.

20 (15) SURPLUS LINES BROKER.—The term “sur-
21 plus lines broker” means an individual, firm, or cor-
22 poration which is licensed in a State to sell, solicit,
23 or negotiate insurance on properties, risks, or expo-
24 sures located or to be performed in a State with
25 nonadmitted insurers.

1 (16) STATE.—The term “State” includes any
2 State of the United States, the District of Columbia,
3 the Commonwealth of Puerto Rico, Guam, the
4 Northern Mariana Islands, the Virgin Islands, and
5 American Samoa.

6 **PART II—REINSURANCE**

7 **SEC. 531. REGULATION OF CREDIT FOR REINSURANCE AND**
8 **REINSURANCE AGREEMENTS.**

9 (a) CREDIT FOR REINSURANCE.—If the State of
10 domicile of a ceding insurer is an NAIC-accredited State,
11 or has financial solvency requirements substantially simi-
12 lar to the requirements necessary for NAIC accreditation,
13 and recognizes credit for reinsurance for the insurer’s
14 ceded risk, then no other State may deny such credit for
15 reinsurance.

16 (b) ADDITIONAL PREEMPTION OF
17 EXTRATERRITORIAL APPLICATION OF STATE LAW.—In
18 addition to the application of subsection (a), all laws, regu-
19 lations, provisions, or other actions of a State that is not
20 the domiciliary State of the ceding insurer, except those
21 with respect to taxes and assessments on insurance com-
22 panies or insurance income, are preempted to the extent
23 that they—

24 (1) restrict or eliminate the rights of the ceding
25 insurer or the assuming insurer to resolve disputes

1 pursuant to contractual arbitration to the extent
2 such contractual provision is not inconsistent with
3 the provisions of title 9, United States Code;

4 (2) require that a certain State's law shall gov-
5 ern the reinsurance contract, disputes arising from
6 the reinsurance contract, or requirements of the re-
7 insurance contract;

8 (3) attempt to enforce a reinsurance contract
9 on terms different than those set forth in the rein-
10 surance contract, to the extent that the terms are
11 not inconsistent with this part; or

12 (4) otherwise apply the laws of the State to re-
13 insurance agreements of ceding insurers not domi-
14 ciled in that State.

15 **SEC. 532. REGULATION OF REINSURER SOLVENCY.**

16 (a) DOMICILIARY STATE REGULATION.—If the State
17 of domicile of a reinsurer is an NAIC-accredited State or
18 has financial solvency requirements substantially similar
19 to the requirements necessary for NAIC accreditation,
20 such State shall be solely responsible for regulating the
21 financial solvency of the reinsurer.

22 (b) NONDOMICILIARY STATES.—

23 (1) LIMITATION ON FINANCIAL INFORMATION
24 REQUIREMENTS.—If the State of domicile of a rein-
25 surer is an NAIC-accredited State or has financial

1 solvency requirements substantially similar to the re-
2 quirements necessary for NAIC accreditation, no
3 other State may require the reinsurer to provide any
4 additional financial information other than the infor-
5 mation the reinsurer is required to file with its
6 domiciliary State.

7 (2) RECEIPT OF INFORMATION.—No provision
8 of this section shall be construed as preventing or
9 prohibiting a State that is not the State of domicile
10 of a reinsurer from receiving a copy of any financial
11 statement filed with its domiciliary State.

12 **SEC. 533. DEFINITIONS.**

13 For purposes of this part, the following definitions
14 shall apply:

15 (1) CEDING INSURER.—The term “ceding in-
16 surer” means an insurer that purchases reinsurance.

17 (2) DOMICILIARY STATE.—The terms “State of
18 domicile” and “domiciliary State” mean, with re-
19 spect to an insurer or reinsurer, the State in which
20 the insurer or reinsurer is incorporated or entered
21 through, and licensed.

22 (3) NAIC.—The term “NAIC” means the Na-
23 tional Association of Insurance Commissioners or
24 any successor entity.

1 (4) REINSURANCE.—The term “reinsurance”
2 means the assumption by an insurer of all or part
3 of a risk undertaken originally by another insurer.

4 (5) REINSURER.—

5 (A) IN GENERAL.—The term “reinsurer”
6 means an insurer to the extent that the in-
7 surer—

8 (i) is principally engaged in the busi-
9 ness of reinsurance;

10 (ii) does not conduct significant
11 amounts of direct insurance as a percent-
12 age of its net premiums; and

13 (iii) is not engaged in an ongoing
14 basis in the business of soliciting direct in-
15 surance.

16 (B) DETERMINATION.—A determination of
17 whether an insurer is a reinsurer shall be made
18 under the laws of the State of domicile in ac-
19 cordance with this paragraph.

20 (6) STATE.—The term “State” includes any
21 State of the United States, the District of Columbia,
22 the Commonwealth of Puerto Rico, Guam, the
23 Northern Mariana Islands, the Virgin Islands, and
24 American Samoa.

1 **PART III—RULE OF CONSTRUCTION**

2 **SEC. 541. RULE OF CONSTRUCTION.**

3 Nothing in this subtitle or the amendments made by
4 this subtitle shall be construed to modify, impair, or super-
5 sede the application of the antitrust laws. Any implied or
6 actual conflict between this subtitle and any amendments
7 to this subtitle and the antitrust laws shall be resolved
8 in favor of the operation of the antitrust laws.

9 **SEC. 542. SEVERABILITY.**

10 If any section or subsection of this subtitle, or any
11 application of such provision to any person or cir-
12 cumstance, is held to be unconstitutional, the remainder
13 of this subtitle, and the application of the provision to any
14 other person or circumstance, shall not be affected.