

[Discussion Draft]
AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2609
OFFERED BY MR. KANJORSKI OF PENNSYLVANIA

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Federal Insurance Of-
3 fice Act of 2009”.

4 **SEC. 2. FEDERAL INSURANCE OFFICE ESTABLISHED.**

5 (a) ESTABLISHMENT OF OFFICE.—Subchapter I of
6 chapter 3 of title 31, United States Code, is amended—

7 (1) by transferring and inserting section 312
8 after section 313;

9 (2) by redesignating sections 313 and 312 (as
10 so transferred) as sections 312 and 315, respec-
11 tively; and

12 (3) by inserting after section 312 (as so reded-
13 igned) the following new sections:

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

15 “(a) ESTABLISHMENT OF OFFICE.—There is estab-
16 lished the Federal Insurance Office as an office in the De-
17 partment of the Treasury.

1 “(b) LEADERSHIP.—The Office shall be headed by a
2 Director, who shall be appointed by the Secretary of the
3 Treasury. The position of such Director shall be a career
4 reserved position in the Senior Executive Service.

5 “(c) FUNCTIONS.—

6 “(1) AUTHORITY PURSUANT TO DIRECTION OF
7 SECRETARY.—The Office shall have the authority,
8 pursuant to the direction of the Secretary, as fol-
9 lows:

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

15 【“(B) To recommend to the Board of Gov-
16 ernors of the Federal Reserve System that it
17 designate an insurer, including its affiliates, as
18 an entity subject to regulation as a Tier 1 fi-
19 nancial holding company under Section 6 of the
20 Bank Holding Company Act of 1956 (12
21 U.S.C. 1845).】

22 “(C) To assist the Secretary in admin-
23 istering the Terrorism Insurance Program es-
24 tablished in the Department of the Treasury

1 under the Terrorism Risk Insurance Act of
2 2002 (15 U.S.C. 6701 note).

3 “(D) To coordinate Federal efforts and es-
4 tablish Federal policy on prudential aspects of
5 international insurance matters, including rep-
6 resenting the United States as appropriate in
7 the International Association of Insurance Su-
8 pervisors and assisting the Secretary in negoti-
9 ating International Insurance Agreements on
10 Prudential Measures.

11 “(E) To determine, in accordance with
12 subsection (f), whether State insurance meas-
13 ures are preempted by International Insurance
14 Agreements on Prudential Measures.

15 “(F) To consult with the States regarding
16 insurance matters of national importance and
17 prudential insurance matters of international
18 importance.

19 “(G) To perform such other related duties
20 and authorities as may be assigned to it by the
21 Secretary.

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

1 “(d) SCOPE.—The authority of the Office shall ex-
2 tend to all lines of insurance except health insurance, as
3 determined by the Secretary based on section 2791 of the
4 Public Health Service Act (42 U.S.C. 300gg-91).

5 “(e) GATHERING OF INFORMATION.—

6 “(1) GENERAL.—In carrying out its functions
7 under subsection (c), the Office may receive and col-
8 lect data and information on and from the insurance
9 industry and insurers, enter into information-sharing
10 agreements, analyze and disseminate data and infor-
11 mation, and issue reports regarding all lines of in-
12 surance except health insurance.

13 “(2) COLLECTION OF INFORMATION FROM IN-
14 SURERS AND AFFILIATES.—Except as provided in
15 paragraph (3), the Office may require an insurer, or
16 affiliate of an insurer, to submit such data or infor-
17 mation that the Office may reasonably require in
18 carrying out its functions under subsection (c).

19 “(3) EXCEPTION FOR SMALL INSURERS.—Para-
20 graph (2) shall not apply with respect to any insurer
21 or affiliate thereof that meets a minimum size
22 threshold that may be established by the Office by
23 order or rule.

24 “(4) ADVANCE COORDINATION.—Before col-
25 lecting any data or information under paragraph (2)

1 from an insurer, or affiliate of an insurer, the Office
2 shall coordinate with each relevant State insurance
3 regulator (or other relevant Federal or State regu-
4 latory agency, if any, in the case of an affiliate of
5 an insurer) to determine if the information to be col-
6 lected is available from, or may be obtained in a
7 timely manner by, such State insurance regulator or
8 other regulatory agency. Notwithstanding any other
9 provision of law, each such relevant State insurance
10 regulator or other Federal or State regulatory agen-
11 cy is authorized to provide to the Office such data
12 or information.

13 “(5) CONFIDENTIALITY.—

14 “(A) The submission of any non-publicly
15 available data and information to the Office
16 under this subsection shall not constitute a
17 waiver of, or otherwise affect, any privilege aris-
18 ing under Federal or State law (including the
19 rules of any Federal or State Court) to which
20 the data or information is otherwise subject.

21 “(B) Any requirement under Federal or
22 State law to the extent otherwise applicable, or
23 any requirement pursuant to a written agree-
24 ment in effect between the original source of
25 any non-publicly available data or information

1 and the source of such data or information to
2 the Office, regarding the privacy or confiden-
3 tiality of any data or information in the posses-
4 sion of the source to the Office, shall continue
5 to apply to such data or information after the
6 data or information has been provided pursuant
7 to this subsection to the Office.

8 “(C) Any data or information submitted by
9 an insurer, or affiliate of an insurer, contained
10 in or related to examination, operating, or con-
11 dition reports prepared by, or on behalf of, or
12 for the use of a State insurance regulator or
13 other Federal or State regulatory agency re-
14 sponsible for the insurer or affiliate’s regulation
15 or supervision shall be considered to be subject
16 to 5 U.S.C. 552(b)(8).

17 “(f) PREEMPTION OF STATE INSURANCE MEAS-
18 URES.—

19 “(1) STANDARD.—A State insurance measure
20 shall be preempted if, and only to the extent that the
21 Director determines, in accordance with this sub-
22 section, that the measure—

23 “(A) directly or indirectly treats a non-
24 United States insurer domiciled in a foreign ju-
25 risdiction that is subject to an International In-

1 surance Agreement on Prudential Measures less
2 favorably than it treats a United States insurer
3 domiciled, licensed, admitted, or otherwise au-
4 thorized in that State; and

5 “(B) is inconsistent with an International
6 Insurance Agreement on Prudential Measures.

7 “(2) DETERMINATION.—

8 “(A) NOTICE OF POTENTIAL INCONSIST-
9 ENCY.—Before making any determination of in-
10 consistency, the Director shall—

11 “(i) cause to be published in the Fed-
12 eral Register notice of the issue regarding
13 the potential inconsistency or preemption,
14 including a description of each State insur-
15 ance measure at issue and any applicable
16 International Insurance Agreement on
17 Prudential Measures;

18 “(ii) provide interested parties a rea-
19 sonable opportunity to submit written com-
20 ments to the Office; and

21 “(iii) consider any comments received.

22 “(B) NOTICE OF DETERMINATION OF IN-
23 CONSISTENCY.—Upon making any determina-
24 tion of inconsistency, the Director shall—

1 “(i) notify the appropriate State of
2 the determination; and

3 “(ii) establish a reasonable period of
4 time before the determination shall become
5 effective.

6 “(3) NOTICE OF EFFECTIVENESS.—Upon the
7 conclusion of the period referred to in paragraph
8 (2)(B)(ii), if the basis for the determination of in-
9 consistency still exists, the determination shall be-
10 come effective and the Director shall—

11 “(A) cause to be published notice in the
12 Federal Register that the preemption has be-
13 come effective, as well as the effective date; and

14 “(B) notify the appropriate State.

15 “(4) LIMITATION.—No State may enforce a
16 State insurance measure to the extent that it has
17 been preempted under this subsection.

18 “(g) REGULATIONS, POLICIES, AND PROCEDURES.—
19 The Secretary may issue orders, regulations, policies and
20 procedures to implement this section.

21 “(h) CONSULTATION.—The Director shall consult
22 with State insurance regulators, to the extent the Director
23 determines appropriate, in carrying out the functions of
24 the Office.

1 “(i) SAVINGS PROVISIONS.—Nothing in this section
2 shall—

3 “(1) preempt any State insurance measure that
4 governs any insurer’s rates, premiums, underwriting
5 or sales practices, or State coverage requirements
6 for insurance, or to the application of the antitrust
7 laws of any State to the business of insurance;

8 [“(2) be construed to alter, amend, or limit any
9 provision of the Consumer Financial Protection
10 Agency Act of 2009; or]

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

14 “(j) ANNUAL REPORT TO CONGRESS.—Beginning
15 September 30, 2011, the Director shall submit a report
16 on or before September 30 of each calendar year to the
17 President and to the Committee on Financial Services of
18 the House of Representatives and the Committee on
19 Banking, Housing, and Urban Affairs of the Senate on
20 the insurance industry, any actions taken by the office
21 pursuant to subsection (f) (regarding preemption of incon-
22 sistent State insurance measures), and any other informa-
23 tion as deemed relevant by the Director or as requested
24 by such Committees.

1 “(k) USE OF EXISTING RESOURCES.—To carry out
2 this section, the Office may employ personnel, facilities,
3 and other Department of the Treasury resources available
4 to the Secretary.

5 “(l) DEFINITIONS.—For purposes of this section and
6 section 314, the following definitions shall apply:

7 “(1) AFFILIATE.—The term ‘affiliate’ means,
8 with respect to an insurer, any person that controls,
9 is controlled by, or is under common control with the
10 insurer.

11 “(2) DETERMINATION OF INCONSISTENCY.—
12 The term ‘determination of inconsistency’ means a
13 determination that a State insurance measure is pre-
14 empted under subsection (f).

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

18 “(4) INTERNATIONAL INSURANCE AGREEMENT
19 ON PRUDENTIAL MEASURES.—The term ‘Inter-
20 national Insurance Agreement on Prudential Meas-
21 ures’ means a written bilateral or multilateral agree-
22 ment entered into between the United States and a
23 foreign government, authority, or regulatory entity
24 regarding prudential measures applicable to the
25 business of insurance or reinsurance.

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

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

8 “(7) SECRETARY.—The term ‘Secretary’ means
9 the Secretary of the Treasury.

10 “(8) STATE.—The term ‘State’ means any
11 State, commonwealth, territory, or possession of the
12 United States, the District of Columbia, the Com-
13 monwealth of Puerto Rico, the Commonwealth of the
14 Northern Mariana Islands, American Samoa, Guam,
15 or the United States Virgin Islands.

16 “(9) STATE INSURANCE MEASURE.—The term
17 ‘State insurance measure’ means any State law, reg-
18 ulation, administrative ruling, bulletin, guideline, or
19 practice relating to or affecting prudential measures
20 applicable to insurance or reinsurance.

21 “(10) STATE INSURANCE REGULATOR.—The
22 term ‘State insurance regulator’ means any State
23 regulatory authority responsible for the supervision
24 of insurers.

1 “(11) UNITED STATES INSURER.—The term
2 ‘United States insurer’ means—

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

5 “(B) a United States branch of a non-
6 United States insurer.

7 “(m) AUTHORIZATION OF APPROPRIATIONS.—There
8 are authorized to be appropriated for the Office such sums
9 as may be necessary for each fiscal year.

10 **“SEC. 314. INTERNATIONAL INSURANCE AGREEMENTS ON**
11 **PRUDENTIAL MEASURES.**

12 “(a) PURPOSE.—It is the sense of the Congress that
13 the insurance marketplace increasingly operates globally
14 with many significant foreign participants. There is in-
15 creasing tension in the current regulatory systems as the
16 result of an absence of clear and settled means for govern-
17 ments to enter into agreements on prudential measures
18 with respect to the business of insurance or reinsurance.
19 This impairs the ability of domestic and foreign-based
20 companies to participate fully in each others’ markets.

21 “(b) AUTHORITY.—The Secretary is authorized to
22 negotiate and enter into International Insurance Agree-
23 ments on Prudential Measures on behalf of the United
24 States.”.

1 (b) DUTIES OF SECRETARY.—Section 321(a) of title
2 31, United States Code, is amended

3 (1) in paragraph (7), by striking “and” at the
4 end;

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

7 (3) by adding at the end the following new
8 paragraph:

9 “(9) advise the President on major domestic
10 and international prudential policy issues in connec-
11 tion with all lines of insurance except health insur-
12 ance.”.

13 (c) CLERICAL AMENDMENT.—The table of sections
14 for subchapter I of chapter 3 of title 31, United States
15 Code, is amended by striking the item relating to section
16 312 and inserting the following new items:

“Sec. 312. Terrorism and Financial Intelligence.

“Sec. 313. Federal Insurance Office.

“Sec. 314. International Insurance Agreements on Prudential Measures.

“Sec. 315. Continuing in office.”.

