SQUIRE PATTON BOGGS

Recent Developments in the Federal Insurance Office

New Director Likely to Be Named. It is being reported that the Treasury Department is about to name Steve Dreyer, who just retired this month from S&P Global Ratings, Inc., as the new Director of the Federal Insurance Office (FIO). Mr. Dreyer's 25-year career at S&P included responsibilities for S&P's work with the corporate utilities, infrastructure and insurance industries. He is a recognized expert in enterprise risk management. Once announced by the Treasury, his appointment will not require congressional confirmation. The position of Director has been vacant since former Director Mike McRaith resigned in January 2017.

President Signs Bill Expanding Oversight of FIO's International Activity, but Questions Its Constitutionality. On May 24, 2018, President Donald Trump signed the Economic Growth, Regulatory Relief and Consumer Protection Act (S.2155). Section 211 of S.2155 provides that the FIO, along with the Treasury Department and the Federal Reserve, must support increased transparency in any global or international insurance standard-setting body in which they might participate, which undoubtedly includes the International Association of Insurance Supervisors (IAIS) and the Financial Stability Board (FSB). In addition, S.2155 requires the Treasury Department and the Federal Reserve to report annually to the Senate Banking Committee and the House Financial Services Committee regarding IAIS and FSB standard-setting efforts and to describe positions taken by the FIO, the Treasury Department and the Federal Reserve.

S.2155 mandates that the FIO, the Treasury Department and the Federal Reserve take positions on insurance proposals by a global insurance regulatory or supervisory forum that "achieve consensus positions with State insurance regulators through the National Association of Insurance Commissioners (NAIC)." This requirement specifically references proposals by the IAIS and the FSB. Notably, the President's Signing Statement accompanying the bill questions the constitutionality of this provision, stating:

> *"Section 211(a) of the Act, though styled as a congressional finding, purports to direct my subordinates in the executive branch to take certain positions before international bodies and to 'achieve consensus positions' with State insurance regulators in negotiations before such bodies. These directives contravene my exclusive constitutional authority to determine the time, scope, and objectives of international negotiations. My Administration will give careful and respectful consideration to the preferences expressed by the Congress in section 211(a) and will consult with State officials as appropriate, but will implement this section in a manner consistent with my constitutional authority to conduct foreign relations."*

To date, there appears to be better coordination with the FIO, the Federal Reserve and the NAIC – aka "Team USA" – on issues crossing into the international sphere than in the past. However, the influence of the IAIS and other international players on the US insurance regulatory framework will continue and will require constant coordination among Team USA in order to avoid a Section 211 controversy.

House Considers Legislation Reducing FIO Authority. The House Financial Services Committee advanced H.R. 3861, the Federal Insurance Office Reform Act, out of committee last week. If finalized, the bill would, *inter alia:*

- Move the FIO into Treasury's Office of International Affairs
- Require the Treasury Secretary to consult with state insurance commissioners before appointing the FIO Director
- Eliminate the Treasury Secretary's ability to assign additional, non-enumerated duties to the Director
- Retain the FIO's responsibilities to represent Treasury in negotiating Covered Agreements, and eliminate its role in federal policy on prudential matters; the FIO would coordinate and achieve consensus on international insurance policy among federal agencies and the states
- Eliminate the FIO's responsibilities regarding insurance matters of national or domestic importance, and require the FIO to consult and reach consensus with states on matters of international importance
- Remove the FIO Director from the non-voting role on the Financial Stability Oversight Council
- Eliminate subpoena and other authority to compel data production from insurers

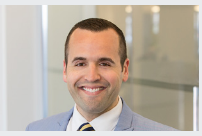
Given the current political dynamic in Washington DC, however, it is not likely that this legislation will become law this Congress.

FIO Background. The FIO was established by Title V of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and is housed within the Treasury Department. Michael McRaith, former Insurance Commissioner of Illinois, was appointed to serve as the first FIO Director. One of the most controversial elements of the original legislation is the ability of the FIO to declare a US state regulation pre-empted in certain circumstances if it is inconsistent with a Covered Agreement. Among the most visible achievements of the FIO to date was negotiation in 2016-2017 of the first Covered Agreement, which governs regulation of some reinsurance and related matters in the US and the EU. The Covered Agreement has not been fully implemented. If enacted, H.R. 3861 would enable only the Secretary of the Treasury, not the FIO Director, to make a pre-emption determination.

Contacts

Patricia R. Hatler
Of Counsel, Columbus
T +1 614 365 2728
E patricia.hatler@squirepb.com

Mary Jo Hudson
Partner, Columbus
T +1 614 365 2732
E mj.hudson@squirepb.com



Brandon C. Roman
Associate, Washington DC
T +1 202 457 5330
E brandon.roman@squirepb.com