

NOVEMBER 30, 2016

RULES COMMITTEE PRINT 114-68
TEXT OF H.R. 5143, TRANSPARENT INSURANCE
STANDARDS ACT OF 2016

**[Showing the text of the bill as reported by the Committee on
Financial Services with a modification.]**

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Transparent Insurance
3 Standards Act of 2016”.

4 **SEC. 2. CONGRESSIONAL FINDINGS.**

5 The Congress finds the following:

6 (1) The State-based system for insurance regu-
7 lation in the United States has served American con-
8 sumers well for more than 150 years and has fos-
9 tered an open and competitive marketplace with a
10 diversity of insurance products to the benefit of pol-
11 icyholders and consumers.

12 (2) Protecting policyholders by regulating to en-
13 sure an insurer’s ability to pay claims has been the
14 hallmark of the successful United States system and
15 should be the paramount objective of domestic pru-
16 dential regulation and emerging international stand-
17 ards.

1 (3) United States officials participating in dis-
2 cussions or negotiations regarding international in-
3 surance standards shall support standards designed
4 for the protection of policyholders.

5 (4) The Secretary of the Treasury shall seek
6 advice and recommendations from a diverse group of
7 outside experts in performing the duties and au-
8 thorities of the Secretary to coordinate Federal ef-
9 forts and develop Federal policy on prudential as-
10 pects of international insurance matters.

11 (5) The draft of the Higher Loss Absorbency
12 capital standard adopted in 2015 by the Inter-
13 national Association of Insurance Supervisors, not-
14 withstanding the concerns of U.S. parties to the
15 International Association of Insurance Supervisors,
16 unequally affects insurance products offered in the
17 United States, an issue that must be addressed.

18 (6) Any international standard agreed to at the
19 International Association of Insurance Supervisors is
20 not self-executing in the United States for any in-
21 surer until implemented through the required Fed-
22 eral or State legislative or regulatory process.

1 **SEC. 3. OBJECTIVES FOR INTERNATIONAL INSURANCE**
2 **STANDARDS.**

3 The objectives of the United States regarding inter-
4 national insurance standards are as follows:

5 (1) To ensure standards that maintain strong
6 protection of policy holders, as reflected in the
7 United States solvency regime.

8 (2) To ensure, pursuant to enactment of the In-
9 surance Capital Standards Clarification Act of 2014
10 (Public Law 113–279), standards that are appro-
11 priate for insurers and are not bank-centric in na-
12 ture.

13 (3) To promote a principles-based approach to
14 insurance supervision, in which capital adequacy is
15 assessed using risk-based capital requirements for
16 insurance combined with qualitative risk assessment
17 and management tools.

18 (4) To consider the most efficient and least dis-
19 ruptive approaches to enhancing regulatory assess-
20 ment of the capital adequacy of insurance groups,
21 including tools that are already in place.

22 (5) To ensure that any international insurance
23 standard recognizes prudential measures used within
24 the United States as satisfying standards finalized
25 by international standard-setting organizations.

1 (6) To support increasing transparency at any
2 global insurance or international standard-setting or-
3 ganization in which the United States participates,
4 including advocating for greater stakeholder public
5 observer access to working groups and committee
6 meetings of the International Association of Insur-
7 ance Supervisors.

8 (7) To ensure that there is a sufficient period
9 for public consultation and comment regarding any
10 proposed international insurance standard before it
11 takes effect.

12 (8) To ensure that the Secretary of the Treas-
13 ury and the Board of Governors of the Federal Re-
14 serve System achieve consensus positions with State
15 insurance commissioners when the Secretary and the
16 Board are United States participants in discussions
17 on insurance issues before the International Associa-
18 tion of Insurance Supervisors, Financial Stability
19 Board, or any other international forum of financial
20 regulators or supervisors that considers such issues.

21 (9) To consider the impact of any such stand-
22 ard on the availability and cost of products to con-
23 sumers.

24 (10) To avoid measures that could limit the
25 availability and accessibility of risk protection and

1 retirement security products that are essential to
2 meeting the needs of aging populations.

3 (11) To ensure that the merits of existing
4 State-based capital standards are recognized and in-
5 corporated in any domestic or global insurance cap-
6 ital standard.

7 (12) To advocate for insurance regulatory
8 standards that are based on the nature, scale, and
9 complexity of the risks posed by the regulated insur-
10 ance group and entity or activity.

11 **SEC. 4. REQUIREMENTS FOR CONSENT TO ADOPT INTER-**
12 **NATIONAL INSURANCE STANDARDS.**

13 (a) PUBLICATION OF STANDARDS; ADOPTION OF
14 CAPITAL AND PRUDENTIAL STANDARDS.—The United
15 States may not agree to, accept, establish, enter into, or
16 consent to the adoption of a final international insurance
17 standard with an international standard-setting organiza-
18 tion or a foreign government, authority, or regulatory enti-
19 ty unless the requirements under both of the following
20 paragraphs are complied with:

21 (1) PUBLICATION.—The requirements under
22 this paragraph are complied with if the conditions
23 under one of the following subparagraphs have been
24 met:

1 (A) BY FEDERAL RESERVE AND TREAS-
2 URY.—The Chairman of the Board of Gov-
3 ernors of the Federal Reserve System and the
4 Secretary of the Treasury have caused the pro-
5 posed text of the proposed final international
6 insurance standard to be published in the Fed-
7 eral Register and made available for public
8 comment for a period of not fewer than 30 days
9 (which period may run concurrently with the
10 90-day period referred to in subsection (b)(3)).

11 (B) BY STATE INSURANCE COMMIS-
12 SIONERS.—The State insurance commissioners
13 have caused the proposed text of the proposed
14 international insurance standard to be pub-
15 lished in a similar form and manner that pro-
16 vides for notice and public comment.

17 (2) CAPITAL STANDARD.—In the case only of a
18 final international insurance standard setting forth
19 any capital standard or standards for insurers—

20 (A) such international capital standard is
21 consistent with capital requirements set forth in
22 the State-based system of insurance regulation;

23 (B) the Board has issued capital require-
24 ments for insurance companies supervised by
25 the Board and subject to such requirements,

1 which shall be issued through rulemaking in ac-
2 cordance with the procedures established under
3 section 553 of title 5, United States Code, re-
4 garding substantive rules, under which the peri-
5 ods for notice and public comment shall each
6 have a duration of not fewer than 60 days; and

7 (C) to the extent that such international
8 capital standard is intended to be applied to a
9 company or companies supervised by the Board
10 of Governors of the Federal Reserve System, is
11 consistent with the capital requirements of the
12 Board for such companies.

13 (b) SUBMISSION AND LAYOVER PROVISIONS.—The
14 Secretary and the Board may not agree to, accept, estab-
15 lish, enter into, or consent to the adoption of an inter-
16 national insurance standard established through an inter-
17 national standard-setting organization or a foreign govern-
18 ment, authority, or regulatory entity unless—

19 (1) the Secretary and the Board have—

20 (A) conducted an analysis under subsection
21 (c) of the proposed international insurance
22 standard; and

23 (B) submitted to the covered congressional
24 committees, on a day on which both Houses of
25 Congress are in session, a copy of the proposed

1 final text of the proposed international insur-
2 ance standard and the report required under
3 subsection (c)(2) regarding such analysis;

4 (2) the Secretary and the Chairman of the
5 Board have determined, pursuant to such analysis,
6 that the proposed standard will not result in any
7 change in State law;

8 (3) with respect to a capital standard under
9 subsection (a)(2), the Secretary and the Chairman
10 of the Board certify that the proposed international
11 capital standard is designed solely to help ensure
12 that sufficient funds are available to pay claims to
13 an insurer's policyholders in the event of the liquida-
14 tion of that entity; and

15 (4) a period of 90 calendar days beginning on
16 the date on which the copy of the proposed final text
17 of the standard is submitted to the covered congress-
18 sional committees under paragraph (1)(B) has ex-
19 pired, during which period the Congress may take
20 action to approve or reject such final standard.

21 (c) JOINT ANALYSIS BY CHAIR OF THE FEDERAL
22 RESERVE AND SECRETARY OF THE TREASURY.—

23 (1) IN GENERAL.—An analysis under this sub-
24 section of a proposed final international insurance
25 standard shall be an analysis conducted by the Sec-

1 retary and the Chairman of the Board of Governors
2 of the Federal Reserve System, in consultation with
3 the State insurance commissioners, of the impact of
4 such standard on consumers and markets in the
5 United States and whether any changes in State law
6 will result from such final standard.

7 (2) REPORT.—Upon completion of an analysis
8 under this subsection of a final international insur-
9 ance standard, the Secretary and the Board shall
10 submit a report on the results of the analysis to the
11 covered congressional committees and the Comp-
12 troller General of the United States. The report
13 shall include a statement setting forth the deter-
14 mination made pursuant to paragraph (1) regarding
15 any changes in State law resulting from such final
16 standard.

17 (3) NOTICE AND COMMENT.—

18 (A) NOTICE.—The Secretary and the
19 Chairman of the Board of Governors of the
20 Federal Reserve System shall provide notice be-
21 fore the date on which drafting the report is
22 commenced and after the date on which the
23 draft of the report is completed.

24 (B) OPPORTUNITY FOR COMMENT.—There
25 shall be an opportunity for public comment for

1 a period beginning on the date on which the re-
2 port is submitted under paragraph (2) and end-
3 ing on the date that is not fewer than 60 days
4 after the date on which the report is submitted.
5 Nothing in this subparagraph shall affect the
6 authority of the Board to issue the rule referred
7 to in subsection (a)(2).

8 (4) REVIEW BY COMPTROLLER GENERAL.—

9 Upon submission of a report pursuant to paragraph
10 (2) to the Comptroller General, the Comptroller
11 General shall review the report and shall submit a
12 report to the Congress setting forth the conclusions
13 of the Comptroller General's review.

14 (d) LIMITED EFFECT.—This section may not be con-
15 strued to establish or expand any authority to implement
16 an international insurance standard in the United States
17 or for the United States or any representative of the Fed-
18 eral Government to adopt or enter into any international
19 insurance standard.

20 (e) TREATMENT OF STATE LAW.—In accordance
21 with the Act of March 9, 1945 (Chapter 20; 59 Stat. 33;
22 15 U.S.C. 1011 et seq.), commonly referred to as the
23 “McCarran-Ferguson Act”, this section may not be con-
24 strued to preempt State law.

1 **SEC. 5. REPORTS.**

2 (a) REPORTS AND TESTIMONY BY SECRETARY OF
3 THE TREASURY AND CHAIR OF THE FEDERAL RE-
4 SERVE.—The Secretary and the Chairman of the Board
5 of Governors of the Federal Reserve System shall submit
6 to the covered congressional committees an annual report
7 and provide testimony, not less often than every 6 months,
8 to the covered congressional committees on the efforts of
9 the Secretary and the Chairman with the State insurance
10 commissioners with respect to international insurance
11 standard-setting organizations and international insur-
12 ance standards, including—

13 (1) a description of the insurance standard-set-
14 ting issues under discussion at international stand-
15 ard-setting bodies, including the Financial Stability
16 Board and the International Association of Insur-
17 ance Supervisors;

18 (2) a description of the effects that inter-
19 national insurance standards could have on con-
20 sumers and insurance markets in the United States;

21 (3) a description of any position taken by the
22 Secretary and the Board in international insurance
23 discussions or on any international insurance stand-
24 ard;

25 (4) a description of the efforts by the Secretary
26 and the Board to increase transparency and ac-

1 countability at the Financial Stability Board with re-
2 spect to insurance proposals and the International
3 Association of Insurance Supervisors, including ef-
4 forts to provide additional public access to working
5 groups and committees of the International Associa-
6 tion of Insurance Supervisors; and

7 (5) a description of how the Secretary and the
8 Board are meeting the objectives set forth in section
9 3, or, if such objectives are not being met, an expla-
10 nation of the reasons for not meeting such objec-
11 tives.

12 (b) **REPORTS AND TESTIMONY BY STATE INSURANCE**
13 **COMMISSIONERS.**—The State insurance commissioners
14 may provide testimony or reports to the Congress on the
15 issues described in subsection (a).

16 (c) **REPORT ON TRANSPARENCY.**—Not later than
17 180 days after the date of enactment of this Act, the
18 Chairman of the Board of Governors of the Federal Re-
19 serve System and the Secretary shall submit to the Con-
20 gress a report and provide testimony to the Congress on
21 the efforts of the Chairman and the Secretary pursuant
22 to subsection (a)(4) of this section to increase trans-
23 parency at meetings of the International Association of In-
24 surance Supervisors.

1 (d) GAO REPORT ON TRANSPARENCY OF OUTSIDE
2 ORGANIZATIONS.—

3 (1) IN GENERAL.—Not later than one year
4 after the date of enactment of this Act, the Comp-
5 troller General of the United States shall submit to
6 the covered congressional committees a report, and
7 provide testimony to such committees, identifying
8 and analyzing the transparency and accountability of
9 any organization acting as a designee of, or at the
10 direction of, the head of a State insurance depart-
11 ment on issues related to international insurance
12 standards, which is not employed directly by the
13 State.

14 (2) CONTENT.—The report and testimony re-
15 quired under this section shall include a description
16 and analysis of—

17 (A) the role, involvement, or relationship,
18 of any organization identified pursuant to para-
19 graph (1), of, with, or to the State insurance
20 departments' activities as authorized by, di-
21 rected by, or otherwise referred to in this Act,
22 including a description and analysis regarding
23 such organization's participation in policy and
24 decision-making deliberations and activities re-
25 lated to international insurance standards;

1 (B) any financial support provided by such
2 organization to any State insurance department
3 personnel in furtherance of their activities re-
4 lated to international insurance standards, the
5 nature and amount of such support, and any
6 understandings between the organization and
7 the State regarding travel protocols and State
8 laws governing State officials' receipt of, bene-
9 fitting from, or being subsidized by, outside
10 funds;

11 (C) the budget, including revenues and ex-
12 penses, of any organization identified pursuant
13 to paragraph (1) relating to participation in
14 international insurance discussions on issues be-
15 fore, involving, or relating to the International
16 Association of Insurance Supervisors, the Fi-
17 nancial Stability Board, or any other inter-
18 national forum of financial regulators or super-
19 visors that considers such issues, and how the
20 organization collects money to fund such activi-
21 ties;

22 (D) whether each such budget of such an
23 organization is developed under a process com-
24 parable in its transparency and accountability
25 to the process under which budgets are devel-

1 oped and appropriated for State departments of
2 insurance and Federal executive branch regu-
3 latory agencies, including—

4 (i) an identification of any bodies
5 independent of the organization that set
6 standards for and/or oversee that organiza-
7 tion’s budgeting process; and

8 (ii) a description of the extent to
9 which and how the organization, in fund-
10 ing its operations, uses or benefits from its
11 members’ ability to compel entities subject
12 to its members’ regulatory authority to use
13 the services of the organization or any of
14 its affiliates; and

15 (E) the extent to which the work product
16 of any organization identified pursuant to para-
17 graph (1) has the effect of establishing any self-
18 executing national standards, and in what way,
19 and whether such standards are developed
20 under processes comparable in their trans-
21 parency and accountability to the process under
22 which national standards are developed by the
23 Congress or Federal executive branch agencies.

24 **SEC. 6. DEFINITIONS.**

25 In this Act:

1 (1) BOARD.—The term “Board” means the
2 Board of Governors of the Federal Reserve System,
3 or the designee of the Board.

4 (2) COVERED CONGRESSIONAL COMMITTEES.—
5 The term “covered congressional committees” means
6 the Committee on Financial Services of the House of
7 Representatives and the Committee on Banking,
8 Housing and Urban Affairs of the Senate.

9 (3) INTERNATIONAL INSURANCE STANDARD.—
10 The term “international insurance standard” means
11 any international insurance supervisory standard de-
12 veloped by an international standards setting organi-
13 zation, or regulatory or supervisory forum, in which
14 the United States participates, including the Com-
15 mon Framework for the Supervision of Internation-
16 ally Active Insurance Groups, the Financial Stability
17 Board, and the International Association of Insur-
18 ance Supervisors.

19 (4) SECRETARY.—The term “Secretary” means
20 the Secretary of the Treasury, or the Secretary’s
21 designee.

22 (5) STATE INSURANCE COMMISSIONERS.—The
23 term “State insurance commissioners” means the
24 heads of the State insurance departments or their
25 designees acting at their direction.

1 **SEC. 7. TREATMENT OF COVERED AGREEMENTS.**

2 Section 314 of title 31, United States Code is amend-
3 ed—

4 (1) in subsection (c)—

5 (A) by redesignating paragraphs (1) and
6 (2) as paragraphs (2) and (3), respectively; and

7 (B) by inserting before paragraph (2), as
8 so redesignated, the following new paragraph:

9 “(1) the Secretary of the Treasury and the
10 United States Trade Representative have caused to
11 be published in the Federal Register, and made
12 available for public comment for a period of not
13 fewer than 30 days (which period may run concu-
14 rently with the 90-day period for the covered agree-
15 ment referred to in paragraph (3)), the proposed
16 text of the covered agreement;” and

17 (2) by adding at the end the following new sub-
18 sections:

19 “(d) CONSULTATION WITH STATE INSURANCE COM-
20 MISSIONERS.—In any negotiations regarding a con-
21 templated covered agreement, the Secretary and the
22 United States Trade Representative shall consult with and
23 directly include State insurance commissioners.

24 “(e) PROHIBITION ON REGULATORY AUTHORITY.—
25 In accordance with subsections (k) and (l) of section 313,
26 a covered agreement shall not be used to establish or pro-

1 vide the Federal Insurance Office or the Treasury with
2 any general supervisory or regulatory authority over the
3 business of insurance or with the authority to participate
4 in a supervisory college or similar process.

5 “(f) TREATMENT UNDER OTHER LAW.—A covered
6 agreement shall not be considered an international insur-
7 ance standard for purposes of the Transparent Insurance
8 Standards Act of 2016 and shall not be subject to such
9 Act.”.

10 **SEC. 8. DUTIES OF INDEPENDENT MEMBER OF FINANCIAL**
11 **STABILITY OVERSIGHT COUNCIL.**

12 Subsection (a) of section 112 of the Dodd-Frank Wall
13 Street Reform and Consumer Protection Act (12 U.S.C.
14 5322(a)) is amended by adding at the end the following
15 new paragraph:

16 “(3) DUTIES OF INDEPENDENT MEMBER.—To
17 assist the Council with its responsibilities to monitor
18 international insurance developments, advise Con-
19 gress, and make recommendations, the Independent
20 Member of the Council shall have the authority to—

21 “(A) regularly consult with international
22 insurance supervisors and international finan-
23 cial stability counterparts;

24 “(B) consult with, advise, and assist the
25 Secretary of the Treasury with respect to rep-

1 resenting the Federal Government of the
2 United States, as appropriate, in the Inter-
3 national Association of Insurance Supervisors
4 (including to become a non-voting member
5 thereof), particularly on matters of systemic
6 risk, and to consult with the Board of Gov-
7 ernors of the Federal Reserve System and the
8 States concerning such matters;

9 “(C) attend the Financial Stability Board
10 of The Group of Twenty and join with other
11 members from the United States, including on
12 matters related to insurance and financial sta-
13 bility, and provide for the attendance and par-
14 ticipation at such Board, on matters related to
15 insurance and financial stability, of State insur-
16 ance commissioners; and

17 “(D) attend, with the United States dele-
18 gation, the Organization for Economic Coopera-
19 tion and Development and observe and partici-
20 pate at the Insurance and Private Pensions
21 Committee of such Organization on matters re-
22 lated to insurance and financial stability.”.

1 **SEC. 9. STATE INSURANCE REGULATOR INVOLVEMENT IN**
2 **INTERNATIONAL STANDARD SETTING.**

3 Parties representing the United States at the Finan-
4 cial Stability Board of the Group of Twenty on matters,
5 and in meetings, related to insurance and financial sta-
6 bility shall consult with, and seek to include in such meet-
7 ings, the State insurance commissioners.

8 **SEC. 10. RULE OF CONSTRUCTION.**

9 Nothing in this Act or the amendments made by this
10 Act may be construed to support or endorse the domestic
11 capital standard for insurers referred to in section 4(a)(2)
12 or any such domestic capital standards established by the
13 Board.

14 **SEC. 11. SECURITIES AND EXCHANGE COMMISSION RE-**
15 **SERVE FUND.**

16 Clause (i) of section 4(i)(2)(B) of the Securities Ex-
17 change Act of 1934 (15 U.S.C. 78d(i)(2)(B)(i)) is amend-
18 ed by inserting before the semicolon the following: “, ex-
19 cept that for fiscal year 2017, the amount deposited may
20 not exceed \$43,000,000”.

