

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 redес-
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 or to any
17 other entity identified under law as having sys-
18 temic risk responsibility, that it designate an in-
19 surer, including its affiliates, as an entity sub-
20 ject to heightened regulation.

21 “(C) To assist the Secretary in admin-
22 istering the Terrorism Insurance Program es-
23 tablished in the Department of the Treasury
24 under the Terrorism Risk Insurance Act of
25 2002 (15 U.S.C. 6701 note).

1 “(D) To coordinate Federal efforts and de-
2 velop Federal policy on prudential aspects of
3 international insurance matters, including rep-
4 resentation as appropriate in the International
5 Association of Insurance Supervisors and assist-
6 ing the Secretary in negotiating international
7 insurance agreements on prudential measures.

8 “(E) To determine, in accordance with
9 subsection (f), whether State insurance meas-
10 ures are preempted by international insurance
11 agreements on prudential measures.

12 “(F) To consult with the States regarding
13 insurance matters of national importance and
14 prudential insurance matters of international
15 importance.

16 “(G) To perform such other related duties
17 and authorities as may be assigned to it by the
18 Secretary.

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

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

1 “(e) GATHERING OF INFORMATION.—

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

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

15 “(3) EXCEPTION FOR SMALL INSURERS.—Para-
16 graph (2) shall not apply with respect to any insurer
17 or affiliate thereof that meets a minimum size
18 threshold that may be established by the Office by
19 order or rule. Such threshold shall be appropriate to
20 the particular request and need for the data or in-
21 formation.

22 “(4) ADVANCE COORDINATION.—Before col-
23 lecting any data or information under paragraph (2)
24 from an insurer, or affiliate of an insurer, the Office
25 shall coordinate with each relevant State insurance

1 regulator (or other relevant Federal or State regu-
2 latory agency, if any, in the case of an affiliate of
3 an insurer) and any publicly available sources to de-
4 termine if the information to be collected is available
5 from, or may be obtained in a timely manner by,
6 such State insurance regulator, individually or col-
7 lectively, other regulatory agency, or publicly avail-
8 able sources. Notwithstanding any other provision of
9 law, each such relevant State insurance regulator or
10 other Federal or State regulatory agency is author-
11 ized to provide to the Office such data or informa-
12 tion.

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 obtained by
9 the Office may be made available to State in-
10 surance regulators individually or collectively
11 through an information sharing agreement that
12 shall comply with applicable Federal law and
13 that shall not constitute a waiver of, or other-
14 wise affect, any privilege under Federal or
15 State law (including the rules of any Federal or
16 State Court) to which the data or information
17 is otherwise subject.

18 “(D) Section 552 of title 5, United States
19 Code, shall apply to any data or information
20 submitted by an insurer or affiliate of an in-
21 surer.

22 “(f) PREEMPTION OF STATE INSURANCE MEAS-
23 URES.—

24 “(1) STANDARD.—A State insurance measure
25 shall be preempted if, and only to the extent that the

1 Director determines, in accordance with this sub-
2 section, that the measure—

3 “(A) directly or indirectly treats a non-
4 United States insurer domiciled in a foreign ju-
5 risdiction that is subject to an international in-
6 surance agreement on prudential measures less
7 favorably than it treats a United States insurer
8 domiciled, licensed, admitted, or otherwise au-
9 thorized in that State; and

10 “(B) is inconsistent with an international
11 insurance agreement on prudential measures
12 that is entered into on a date after the date of
13 the enactment of this Act.

14 “(2) DETERMINATION.—

15 “(A) NOTICE OF POTENTIAL INCONSIST-
16 ENCY.—Before making any determination of in-
17 consistency, the Director shall—

18 “(i) cause to be published in the Fed-
19 eral Register notice of the issue regarding
20 the potential inconsistency or preemption,
21 including a description of each State insur-
22 ance measure at issue and any applicable
23 international insurance agreement on pru-
24 dential measures;

1 “(ii) provide interested parties a rea-
2 sonable opportunity to submit written com-
3 ments to the Office;

4 “(iii) consider the effect of preemption
5 on—

6 “(I) the protection of policy-
7 holders and policy claimants;

8 “(II) the maintenance of the
9 safety, soundness, integrity, and fi-
10 nancial responsibility of any entity in-
11 volved in the business of insurance or
12 insurance operations;

13 “(III) ensuring the integrity and
14 stability of the United States financial
15 system;

16 “(IV) the need to establish a su-
17 pervisory or regulatory authority of
18 the Office over any entity involved in
19 the business of insurance or insurance
20 operations in the United States; and

21 “(V) the creation of a gap or void
22 in financial or market conduct regula-
23 tion of any entity involved in the busi-
24 ness of insurance or insurance oper-
25 ations in the United States; and

1 “(iv) consider any comments received.

2 “(B) SCOPE OF REVIEW.—For purposes of
3 this section, the Director’s determination of
4 State insurance measures shall be limited to the
5 subject matter of the prudential measures ap-
6 plicable to the business of insurance contained
7 within the international insurance agreement on
8 prudential measures involved.

9 “(C) NOTICE OF DETERMINATION OF IN-
10 CONSISTENCY.—Upon making any determina-
11 tion of inconsistency, the Director shall—

12 “(i) notify the appropriate State of
13 the determination and the extent of the in-
14 consistency;

15 “(ii) establish a reasonable period of
16 time, which shall not be shorter than 90
17 days, before the determination shall be-
18 come effective; and

19 “(iii) notify the Committee on Finan-
20 cial Services of the House of Representa-
21 tives and the Committee on Banking,
22 Housing, and Urban Affairs of the Senate
23 of the inconsistency.

24 “(3) NOTICE OF EFFECTIVENESS.—Upon the
25 conclusion of the period referred to in paragraph

1 (2)(B)(ii), if the basis for the determination of in-
2 consistency still exists, the determination shall be-
3 come effective and the Director shall—

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

7 “(B) notify the appropriate State.

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

11 “(g) APPLICABILITY OF ADMINISTRATIVE PROCE-
12 DURE ACT.—Determinations of inconsistency pursuant to
13 subsection (f)(2) shall be subject to the applicable provi-
14 sions of subchapter II of chapter 5 of title 5, United
15 States Code (relating to administrative procedure), and
16 chapter 7 of such title (relating to judicial review).

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

20 “(i) CONSULTATION.—The Director shall consult
21 with State insurance regulators, individually and collec-
22 tively, to the extent the Director determines appropriate,
23 in carrying out the functions of the Office.

24 “(j) SAVINGS PROVISIONS.—Nothing in this section
25 shall—

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

6 “(2) be construed to alter, amend, or limit the
7 responsibility of any department or agency of the
8 Federal Government to issue regulations under the
9 Truth in Lending Act (15 U.S.C. 1601 et seq.) or
10 any other Federal law regulating the provision of
11 consumer financial products or services; or

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

15 “(k) RETENTION OF EXISTING STATE REGULATORY
16 AUTHORITY.—Nothing in this section shall be construed
17 to establish a general supervisory or regulatory authority
18 of the Office or the Department of the Treasury over the
19 business of insurance.

20 “(l) ANNUAL REPORT TO CONGRESS.—Beginning
21 September 30, 2011, the Director shall submit a report
22 on or before September 30 of each calendar year to the
23 President and to the Committee on Financial Services of
24 the House of Representatives and the Committee on
25 Banking, Housing, and Urban Affairs of the Senate on

1 the insurance industry, any actions taken by the office
2 pursuant to subsection (f) (regarding preemption of incon-
3 sistent State insurance measures), and any other informa-
4 tion as deemed relevant by the Director or as requested
5 by such Committees.

6 “(m) USE OF EXISTING RESOURCES.—To carry out
7 this section, the Office may employ personnel, facilities,
8 and other Department of the Treasury resources available
9 to the Secretary.

10 “(n) DEFINITIONS.—For purposes of this section and
11 section 314, the following definitions shall apply:

12 “(1) AFFILIATE.—The term ‘affiliate’ means,
13 with respect to an insurer, any person that controls,
14 is controlled by, or is under common control with the
15 insurer.

16 “(2) DETERMINATION OF INCONSISTENCY.—
17 The term ‘determination of inconsistency’ means a
18 determination that a State insurance measure is pre-
19 empted under subsection (f).

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

23 “(4) INTERNATIONAL INSURANCE AGREEMENT
24 ON PRUDENTIAL MEASURES.—The term ‘inter-
25 national insurance agreement on prudential meas-

1 ures’ means a written bilateral or multilateral agree-
2 ment entered into between the United States and a
3 foreign government, authority, or regulatory entity
4 regarding prudential measures applicable to the
5 business of insurance or reinsurance.

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

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

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

15 “(8) STATE.—The term ‘State’ means any
16 State, commonwealth, territory, or possession of the
17 United States, the District of Columbia, the Com-
18 monwealth of Puerto Rico, the Commonwealth of the
19 Northern Mariana Islands, American Samoa, Guam,
20 or the United States Virgin Islands.

21 “(9) STATE INSURANCE MEASURE.—The term
22 ‘State insurance measure’ means any State law, reg-
23 ulation, administrative ruling, bulletin, guideline, or
24 practice relating to or affecting prudential measures
25 applicable to insurance or reinsurance.

1 “(10) STATE INSURANCE REGULATOR.—The
2 term ‘State insurance regulator’ means any State
3 regulatory authority responsible for the supervision
4 of insurers.

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

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

9 “(B) a United States branch of a non-
10 United States insurer.

11 “(o) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated for the Office such sums
13 as may be necessary for each fiscal year.

14 **“SEC. 314. INTERNATIONAL INSURANCE AGREEMENTS ON**
15 **PRUDENTIAL MEASURES.**

16 “The Secretary is authorized to negotiate and enter
17 into international insurance agreements on prudential
18 measures on behalf of the United States.”.

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

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

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

1 (3) by adding at the end the following new
2 paragraph:

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

7 (c) CLERICAL AMENDMENT.—The table of sections
8 for subchapter I of chapter 3 of title 31, United States
9 Code, is amended by striking the item relating to section
10 312 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.”.

