

1 **TITLE V—OFFICE OF NATIONAL INSURANCE**

2 **SEC. 501. SHORT TITLE.**

3 This title may be cited as the “Office of National Insurance Act of 2009”.

4 **SEC. 502. OFFICE OF NATIONAL INSURANCE ESTABLISHED.**

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

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

8 (2) by redesignating sections 313 and 312 (as so transferred) as sections 312 and
9 315, respectively; and

10 (3) by inserting after section 312 (as so redesignated) the following new sections:

11 **“SEC. 313. OFFICE OF NATIONAL INSURANCE.**

12 “(a) ESTABLISHMENT.—There is established the Office of National Insurance as an office
13 in the Department of the Treasury.

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

17 “(c) FUNCTIONS.—

18 “(1) AUTHORITY PURSUANT TO DIRECTION OF SECRETARY.—The Office shall have
19 the authority, pursuant to the direction of the Secretary, as follows:

20 “(A) to monitor all aspects of the insurance industry, including
21 identifying issues or gaps in the regulation of insurers that could contribute to a
22 systemic crisis in the insurance industry or the United States financial system;

23 “(B) to recommend to the Board of Governors of the Federal Reserve

1 System that it designate an insurer, including its affiliates, as an entity subject to
2 regulation as a Tier 1 financial holding company under Section 6 of the Bank
3 Holding Company Act of 1956 (12 U.S.C. 1845);

4 “(C) to assist the Secretary in administering the Terrorism Insurance
5 Program established in the Department of the Treasury under the Terrorism Risk
6 Insurance Act of 2002 (15 U.S.C. 6701 note);

7 “(D) to coordinate Federal efforts and establish Federal policy on
8 prudential aspects of international insurance matters, including representing the
9 United States as appropriate in the International Association of Insurance
10 Supervisors and assisting the Secretary in negotiating International Insurance
11 Agreements on Prudential Measures;

12 “(E) to determine, in accordance with subsection (f), whether State
13 insurance measures are preempted by International Insurance Agreements on
14 Prudential Measures;

15 “(F) to consult with the States regarding insurance matters of national
16 importance and prudential insurance matters of international importance; and

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

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

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

1 “(e) GATHERING OF INFORMATION.—

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

6 “(2) COLLECTION OF INFORMATION FROM INSURERS AND AFFILIATES.—Except as
7 provided in paragraph (3), the Office may require an insurer, or affiliate of an insurer, to
8 submit such data or information that the Office may reasonably require in carrying out its
9 functions under subsection (c).

10 “(3) EXCEPTION FOR SMALL INSURERS.—Paragraph (2) shall not apply with respect
11 to any insurer or affiliate thereof that meets a minimum size threshold that may be
12 established by the Office by order or rule.

13 “(4) ADVANCE COORDINATION.—Before collecting any data or information under
14 paragraph (2) from an insurer, or affiliate of an insurer, the Office shall coordinate with
15 each relevant State insurance regulator (or other relevant Federal or State regulatory
16 agency, if any, in the case of an affiliate of an insurer) to determine if the information to
17 be collected is available from, or may be obtained in a timely manner by, such State
18 insurance regulator or other regulatory agency. Notwithstanding any other provision of
19 law, each such relevant State insurance regulator or other Federal or State regulatory
20 agency is authorized to provide to the Office such data or information.

21 “(5) CONFIDENTIALITY.—

22 “(A) The submission of any non-publicly available data and information to
23 the Office under this subsection shall not constitute a waiver of, or otherwise

1 affect, any privilege arising under Federal or State law (including the rules of any
2 Federal or State Court) to which the data or information is otherwise subject;

3 “(B) any requirement under Federal or State law to the extent otherwise
4 applicable, or any requirement pursuant to a written agreement in effect between
5 the original source of any non-publicly available data or information and the
6 source of such data or information to the Office, regarding the privacy or
7 confidentiality of any data or information in the possession of the source to the
8 Office, shall continue to apply to such data or information after the data or
9 information has been provided pursuant to this subsection to the Office; and

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

15 “(6) SUBPOENAS AND ENFORCEMENT.—The Office shall have power to require by
16 subpoena the production of the data or information requested under paragraph (2).

17 Subpoenas shall bear the signature of the Director and shall be served by any person or
18 class of persons designated by the Director for that purpose. In the case of contumacy or
19 failure to obey a subpoena, the subpoena shall be enforceable by order of any appropriate
20 district court of the United States. Any failure to obey the order of the court may be
21 punished by the court as a contempt of court.

22 “(f) PREEMPTION OF STATE INSURANCE MEASURES.—

23 “(1) STANDARD.—A State insurance measure shall be preempted if, and only to

1 the extent that the Director determines, in accordance with this subsection, that the
2 measure—

3 “(A) directly or indirectly treats a non-United States insurer domiciled in a
4 foreign jurisdiction that is subject to an International Insurance Agreement on
5 Prudential Measures less favorably than it treats a United States insurer
6 domiciled, licensed, admitted, or otherwise authorized in that State; and

7 “(B) is inconsistent with an International Insurance Agreement on
8 Prudential Measures.

9 “(2) DETERMINATION.—

10 “(A) NOTICE OF POTENTIAL INCONSISTENCY.— Before making any
11 determination of inconsistency, the Director shall—

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

16 “(ii) provide interested parties a reasonable opportunity to submit
17 written comments to the Office; and

18 “(iii) consider any comments received.

19 “(B) NOTICE OF DETERMINATION OF INCONSISTENCY.— Upon making any
20 determination of inconsistency, the Director shall

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

22 “(ii) establish a reasonable period of time before the determination
23 shall become effective.

1 “(3) NOTICE OF EFFECTIVENESS.—Upon the conclusion of the period referred to in
2 paragraph (2)(B)(ii), if the basis for the determination of inconsistency still exists, the
3 determination shall become effective and the Director shall—

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

6 “(ii) notify the appropriate State.

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

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

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

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

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

17 “(2) be construed to alter, amend, or limit any provision of the Consumer
18 Financial Protection Agency Act of 2009; or

19 “(3) affect the preemption of any State insurance measure otherwise inconsistent
20 with and preempted by Federal law.

21 “(j) ANNUAL REPORT TO CONGRESS.—Beginning September 30, 2011, the Director shall
22 submit a report on or before September 30 of each calendar year to the President and to the
23 Committee on Financial Services of the House of Representatives and the Committee on

1 Banking, Housing, and Urban Affairs of the Senate on the insurance industry, any actions taken
2 by the office pursuant to subsection (f) (regarding preemption of inconsistent State insurance
3 measures), and any other information as deemed relevant by the Director or as requested by such
4 Committees.

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

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

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

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

14 “(3) INSURER.—The term ‘insurer’ means any person engaged in the business of
15 insurance, including reinsurance.

16 “(4) INTERNATIONAL INSURANCE AGREEMENT ON PRUDENTIAL MEASURES.—The
17 term ‘International Insurance Agreement on Prudential Measures’ means a written
18 bilateral or multilateral agreement entered into between the United States and a foreign
19 government, authority, or regulatory entity regarding prudential measures applicable to
20 the business of insurance or reinsurance.

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

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

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

4 “(8) STATE.—The term ‘State’ means any State, commonwealth, territory, or
5 possession of the United States, the District of Columbia, the Commonwealth of Puerto
6 Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or
7 the United States Virgin Islands.

8 “(9) STATE INSURANCE MEASURE.—The term ‘State insurance measure’ means
9 any State law, regulation, administrative ruling, bulletin, guideline, or practice relating to
10 or affecting prudential measures applicable to insurance or reinsurance.

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

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

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

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

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

18 **“SEC. 314 INTERNATIONAL INSURANCE AGREEMENTS ON PRUDENTIAL**
19 **MEASURES.**

20 “(a) PURPOSE.—It is the sense of the Congress that the insurance marketplace
21 increasingly operates globally with many significant foreign participants. There is increasing
22 tension in the current regulatory systems as the result of an absence of clear and settled means
23 for governments to enter into agreements on prudential measures with respect to the business of

1 insurance or reinsurance. This impairs the ability of domestic and foreign-based companies to
2 participate fully in each others' markets.

3 “(b) AUTHORITY.—The Secretary is authorized to negotiate and enter into International
4 Insurance Agreements on Prudential Measures on behalf of the United States.”.

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

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

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

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

10 “(9) advise the President on major domestic and international prudential policy
11 issues in connection with all lines of insurance except health insurance.”.

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

15 “Sec. 312. Terrorism and Financial Intelligence.

16 “Sec. 313. Office of National Insurance.

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

18 “Sec. 315. Continuing in office.”.