

**FEDERAL INSURANCE OFFICE ISSUES REPORT CONCERNING
FINANCIAL INFORMATION OF REINSURERS**

by

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Part II of Title V of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“the Act”) addresses the regulation of reinsurance. Among those provisions is a requirement that the Federal Insurance Office (“FIO”) submit a report to Congress “describing the impact of [P]art II of [the Act] on the ability of State regulators to access reinsurance information for regulated entities in their jurisdictions.”¹ A “regulated entity” is a licensed reinsurer. The FIO recently submitted this report, which concluded that the Act was not having an adverse impact on the ability of state regulators to obtain reinsurance information.² The Report interprets this statutory provision fairly narrowly, as referring to the ability of a state insurance department to obtain financial information concerning a reinsurer domiciled in another jurisdiction. There is no suggestion that the Act might adversely affect the ability of a state insurance department to obtain information concerning a reinsurer domiciled in that state, or information concerning reinsurance contracted for by a ceding insurer domiciled in that state.

The Report states that the Act seeks “to introduce greater uniformity in the treatment of reinsurance across the states by increasing deference to the authorities of the regulator in the reinsurer’s domiciliary state.”³ The Act accomplishes this purpose with provisions concerning the authority of the insurance regulator of a domiciliary state in the following respects:

- the reinsurer’s domiciliary state is “solely responsible for regulating the financial solvency of the reinsurer”;⁴
- the reinsurer’s domiciliary state controls financial reporting by the reinsurer, and a non-domiciliary regulator may not require that a reinsurer submit to it financial information other than the financial information provided to the regulator of the reinsurer’s domiciliary state;

¹ 31 U.S.C. § 313(o)(2).

² The Report is available at <http://www.treasury.gov/initiatives/fio/reports-and-notices/Documents/2013%20FIO%20NRRA%20Report.pdf>.

³ Report at 2.

⁴ 15 U.S.C. § 8222(a).

- the ceding insurer’s domiciliary regulator controls when the insurer may obtain credit for reinsurance on its financial statements, in that if the ceding insurer’s domiciliary state “recognizes credit for reinsurance for the insurer’s ceded risk, then no other State may deny such credit for reinsurance”;⁵ and
- the law of the domiciliary state of a ceding insurer preempts the law of other states with respect to certain reinsurance contract provisions.⁶

The Report focuses on one aspect of this regulatory allocation scheme - the ability of a state to require that reinsurers not domiciled in that state provide it with financial information other than that provided to the reinsurer’s domiciliary regulator. The requirement of a report on this issue may evidence that Congress was concerned that this particular restriction might prevent regulators from obtaining financial information which would be necessary for the proper regulation of reinsurers.

To prepare the Report, the FIO consulted with state insurance regulators (through the NAIC) and consulted with the Reinsurance Association of America. The findings section of the Report is only five short paragraphs long, and includes the following:

- prior to the enactment of the Act, only “a small number of states” had required the submission of financial information from reinsurers that was not required by the regulator of the reinsurer’s domiciliary state, i.e., only a small number of states would likely be affected by this provision, if at all;⁷
- state regulators “did not express any concern about the potential impact of [the Act]” other than a few expressing “speculation” that some information might not be made available in the future;⁸
- the RAA was unaware of “any situation in which a state regulator has been unable to obtain information in which it had an interest.”⁹

There has been a framework in place for years pursuant to which state insurance departments have shared information concerning regulated companies with each other. The FIO apparently found no evidence that this information sharing process has been disrupted by the

⁵ 15 U.S.C. § 8221(a) (conditional upon the domiciliary state being NAIC-accredited or having solvency requirements similar to that of an NAIC-accredited state).

⁶ 15 U.S.C. § 8221(b).

⁷ Report at 3.

⁸ Report at 4.

⁹ *Id.*

operation of the Act. The FIO is required by the Act to submit a revised Report on this information issue no later than January 1, 2015.

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