

INSURANCE

Insurance companies are experts at managing risk. They use their expertise to design insurance products to help their clients prepare for unexpected events. Policyholders pay regular premiums with the promise from the insurance firm that it will provide compensation based on a pre-determined contract. Insurance comes in many forms, including property casualty policies and life insurance policies. Some common property casualty policies include automobile insurance, homeowners insurance, and flood insurance, just to name a few. Life insurance policies include, but are not exclusive to, term life, whole life, and universal life, which provide consumers with different benefit options.

According to a [report](#) published in September 2020 by the Brattle Group, the life insurance industry in the U.S. is a driver of economic growth and important to the overall health and financial well-being of U.S. households. Through its primary products—life insurance, annuities, and non-medical health products such as disability income insurance and long-term care insurance . . . the life insurance industry functions as a unique private provider of personal financial protection.”

The insurance sector is also an integral provider of capital to the U.S. economy and the global economy. Inappropriately structured regulation for the insurance sector could have a significant impact on the ability of many public and private entities to access stable capital. The Chamber of Commerce issued a report in March 2019 describing how the insurance sector invests in the U.S. economy. The report finds that U.S. insurance assets totaled approximately \$5.8 trillion as of December 2017.

The unique investment strategy of insurance companies results in tangible, long-term projects being financed by these firms and, indirectly, by policyholders. This investment includes a 21% share of all corporate bonds, approximately \$1.9 trillion, which funds the growth and operations of myriad businesses in all corners of the U.S. economy. For example, life insurers’ public corporate bond investments alone funded about \$120 billion of business investment in needed plants, equipment, and other capital expenditures in 2017. The investment also includes 20% of all municipal bonds outstanding, approximately \$800 billion, which helps fund the activities of state and local governments, including infrastructure investment.

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CONGRESS: CREATE NEW PROGRAM TO REPLACE BUSINESS REVENUE DURING PANDEMICS

Government orders to close or cease operations, and other disruptions caused by COVID-19, raised new questions about the availability and terms of coverage for business interruption insurance and event cancellation insurance. Business interruption insurance is generally understood to replace income that has been forgone due to a covered disaster while event cancellation insurance replaces revenues for a specific event that has to be postponed or canceled. The markets for these insurance policies are robust, but exclusions for loss of damage caused by or resulting from a virus have become more prevalent in recent years leading up to the COVID-19 pandemic. Insurance carriers have struggled with how to underwrite the risk of a pandemic, which causes uncharacteristically difficult-to-predict losses that are not well diversified over geography or time, unlike other perils such as hurricanes and earthquakes.

ACTION: Congress should enact legislation, primarily funded by the federal government, that provides businesses with revenue replacement in the event of business interruption or event cancellation due to a pandemic.

CONGRESS: IMPROVE IAIS TRANSPARENCY

The IAIS is a voluntary membership organization of insurance supervisors and regulators from more than 200 jurisdictions. The mission of the IAIS is to promote effective and globally consistent supervision of the insurance industry in order to develop and maintain fair, safe, and stable insurance markets for the benefit and protection of policyholders and to contribute to global financial stability. Representatives from the U.S. include the Treasury Department, FRB, and National Association of Insurance Commissioners.

The Chamber believes adequate transparency into the dealings of U.S. representatives at the IAIS is critical. While the U.S. is not bound to adopt or implement IAIS policies, the work of this body can influence the direction of jurisdictional supervision and/or regulatory requirements and may not adequately consider specificities and needs of U.S. consumers and markets.

The International Insurance Capital Standards Accountability Act of 2017 (S. 2155–115th) was signed into law in 2018. The bipartisan legislation requires more transparency from U.S. representatives to the IAIS, including regular reports to Congress, and the establishment of a new Insurance Policy Advisory Committee at the FRB. However, at the time of this report, only one hearing has been held by Congress.

ACTION: The Senate Banking Committee and House Financial Services Committee should convene the annual hearings called for under the law.

U.S. REPRESENTATIVES TO THE IAIS: REQUEST TRANSPARENCY AND ACCOUNTABILITY FOR THE INSURANCE CAPITAL STANDARD

In recent years, standard-setting bodies have worked to develop standards that ensure cross-border solvency and stability for insurers with operations across regulatory regimes. In particular, the Insurance Capital Standard (ICS) currently under development by the IAIS is an effort to define comparable standards and determine solvency levels for internationally active insurance groups.

The Chamber believes that a global insurance capital standard must accommodate the specificities of the U.S. market—the world’s largest insurance market—including the type of products favored and needed by U.S. consumers; the time-tested supervisory practices employed by state insurance regulators; and use of diverse asset classes to back insurance liabilities that are critical to supporting financial markets, especially for infrastructure, housing, and corporate debt. To accomplish this, the IAIS must accept the Aggregation Method as a comparable alternative approach to the ICS.

While we appreciate the IAIS’ decision to modify its timeline for voluntary reporting of ICS data in 2020, we believe the impacts of COVID-19 necessitate a broader reassessment of the ICS work plan and development timeline.

ACTION: U.S. members of the IAIS—the Treasury Department’s Federal Insurance Office, FRB, and National Association of Insurance Commissioners—should pursue an extension of the Monitoring Period of at least one year, given the limited ability for discussion of ICS results in supervisory colleges, the impact travel restrictions will have on the ability to review data, and so on. Such an extension will be needed in order to realize the originally intended value of the Monitoring Period.

ACTION: U.S. members of the IAIS should pursue moving the economic impact assessment, which is a critical part of the Monitoring Period, to an earlier stage to ensure there is adequate time to review the results and take meaningful action to address any material flaws and unintended consequences that are identified. The IAIS plan to conclude the economic impact assessment in the last year of the Monitoring Period is unacceptable as it will not permit enough time to inform changes to the standard before it goes into effect.

FRB: IMPROVE AND IMPLEMENT THE BUILDING BLOCK APPROACH

The FRB published a proposal in September 2019 to establish capital requirements for certain insurance companies that it supervises. Under the framework, known as the Building Block Approach (BBA), holding companies significantly engaged in insurance activities would be required to aggregate their state-based capital requirements into a consolidated requirement. The proposal would establish both a minimum requirement and a buffer on top of the minimum.

The Chamber supports the FRB decision to pursue a risk-based group capital framework that aggregates existing legal entity capital requirements, with certain adjustments. The Chamber has urged the FRB to consider several improvements to the design of the framework, in particular that the BBA should avoid deviating from the state-based regulatory system, changes to the definition of qualifying capital, and embracing a robust cost-benefit analysis.

ACTION: The FRB should finalize the BBA once it has updated the framework to include certain improvements.

CONGRESS: ENACT THE STATE INSURANCE REGULATION PRESERVATION ACT (H.R. 5059–115TH)

The Dodd-Frank Act transferred supervision of Insurance Savings and Loan Holding Companies (ISLHCs) to the FRB, causing insurance companies with an affiliated savings association to be required to submit to certain requirements that are more appropriate for banks. Furthermore, many of the requirements are duplicative to the state-based regulation and supervision of insurance companies.

The State Insurance Regulation Preservation Act (H.R. 5059–115th) would require the FRB to tailor the regulation and supervision of ISLHCs and remove duplicative burdens.

ACTION: Congress should enact the State Insurance Regulation Preservation Act (H.R. 5059–115th).

U.S. REPRESENTATIVES TO THE IAIS: IMPLEMENT HOLISTIC FRAMEWORK FOR SYSTEMIC RISK

The Chamber supports the IAIS' adoption of the Holistic Framework, which embraces an activities-based approach (ABA) to assessing potential sources of systemic risk, and the accompanying FSB decision to suspend the identification of globally systemic important insurers (G-SIIs) while jurisdictions implement the framework. The Chamber supports the efforts of U.S. supervisors to implement supervisory and macroprudential tools that are necessary to fully implement an ABA and ensure that the FSB's 2022 review of the effectiveness of the Holistic Framework results in permanent discontinuation of G-SII identification.

ACTION: U.S. members of the IAIS should continue to pursue development and implementation of any tools necessary to complete implementation of the Holistic Framework.

ACTION: U.S. members of the IAIS should ensure the IAIS process for assessing jurisdictional implementation of the Holistic Framework is unbiased and adequately considers all elements of insurance and systemic risk supervision/oversight in our market.

ACTION: U.S. members of the IAIS and FSB should closely monitor the impacts of COVID-19 and the potential need to defer the 2022 review of how implementation of the Holistic Framework is progressing and how it is working in practice until 2023 or later.

CONGRESS: CLARIFY CFPB'S AUTHORITY OVER THE BUSINESS OF INSURANCE

The CFPB has initiated actions involving insurance products and services that fall within the exclusive authority of state insurance regulators despite the Dodd-Frank Act intending to make clear that the bureau does not have authority over the "business of insurance."

The Dodd-Frank Act intended to limit the CFPB's authority over the business of insurance, but the bureau has taken various actions that overstep these limits and interrupt a well-regulated and robust insurance market that adequately serves the needs of consumers. Insurance is regulated by the states and the Dodd-Frank Act makes clear that the bureau has extremely limited and narrow authority to regulate the business of insurance. Nonetheless, various actions by the bureau, including via its supervisory function, have exceeded its authority.

ACTION: Congress should enact legislation to clarify that the CFPB does not have authority over the business of insurance.

CONGRESS: DIRECT THE GAO TO STUDY AUTO-INSURANCE UNDERWRITING

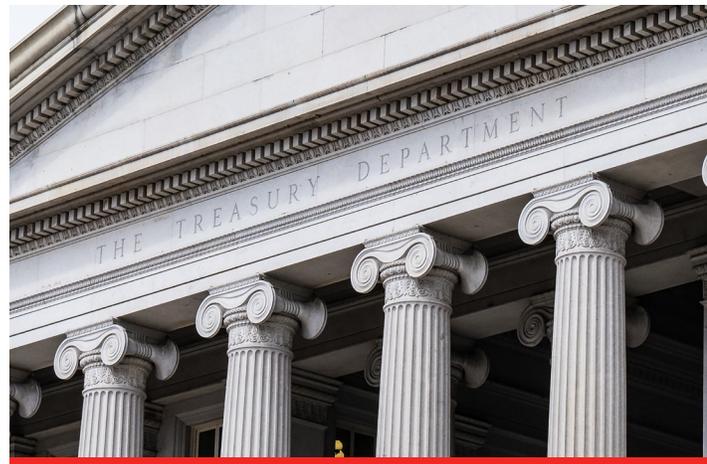
Insurance companies rely on a wide range of predictive data to confidently underwrite actuarially sound policies they make available to consumers, including credit-based insurance risk scores. Credit-based insurance risk scores are used by 95% of auto insurers in states where this is permissible. Numerous studies have shown that there is a correlation between credit-based insurance risk scores and auto insurance loss. However, concerns have also been raised that credit-based insurance risk scores can contribute to unfair outcomes for minorities, including relatively high-priced policies compared with other drivers.

The Chamber believes concerns about unfair outcomes should be identified along with an impartial review of the data associated with the major cost drivers of auto insurance, including the impact of an individual's credit-based insurance risk score. The Government Accountability Office (GAO) is arguably the most independent federal entity for conducting research analysis. The GAO should conduct a study, which should not be based on preconceived conclusions, to inform the need for any potential policy changes for underwriting of automobile insurance.

ACTION: Congress should direct the GAO to conduct an independent study of the major cost drivers that affect the underwriting of automobile insurance to determine if there are any biases that cause inequitable outcomes for minorities, including the major cost drivers of auto insurance along with their correlation to the risk of loss.

CONGRESS: REMOVE THE FEDERAL INSURANCE OFFICE'S SUBPOENA AUTHORITY

The Chamber supported the creation of the Federal Insurance Office (FIO) because it allows the American insurance industry to have a unified governmental entity in the negotiation of international agreements. However, there is no justifiable reason for FIO to have subpoena authority.



The Chamber recommends that the subpoena authority of FIO be rescinded given it is not a regulator. Additionally, the Chamber recommends that FIO coordinate with state insurance commissioners to avoid redundant data requests being imposed on industry.

ACTION: Congress should remove FIO’s subpoena authority by amending Section 513 of the Dodd-Frank Act.

HUD: UPHOLD CLARIFICATION THAT DISPARATE IMPACT RULE DOES NOT APPLY TO INSURANCE

Uncertainty about the availability of disparate impact claims under the Fair Housing Act (FHA) and the contours of any such liability make it challenging for companies to understand their compliance obligations in this context. Varying regulatory and judicial interpretations of the FHA, and related statutes, further complicate these efforts. Companies often decide to avoid undertaking beneficial new projects, offering valuable features, or developing innovative products out of fear of later being second-guessed under a disparate impact theory. The Supreme Court recognized in its decision in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project* that such outcomes “undermine [the] purpose [of the FHA] as well as the free-market system.” In September 2019, the Department of Housing and Urban Development (HUD) issued a Proposed Rule to address these questions, including the applicability of HUD’s disparate impact rule to insurance.

The Chamber requested that HUD’s Disparate Impact Rule, among other things, be clarified with respect to the business of insurance. The Chamber cited the McCarran-Ferguson Act, which states, “no Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any state for the purpose of regulating the business of insurance,” to argue that application of the Fair Housing Act to insurance is inappropriate and contrary to Congressional intent. HUD’s final rule, issued in September 2020, stated “State laws regulating insurance will supersede the Fair Housing Act in a discriminatory impact case if the application of the Fair Housing Act in that case would invalidate, impair, or supersede State law regulating insurance.”

ACTION: Policymakers should support the Fair Housing Act Disparate Impact Rule finalized by HUD in September 2020, including its clarifications for the treatment of insurance.

MAINTAIN NATIONAL ASSOCIATION OF REGISTERED AGENTS AND BROKERS QUORUM

The National Association of Registered Agents and Brokers (NARAB) is a licensing mechanism for insurance agents and brokers operating outside their home states that permits regulators to maintain their authority to oversee their activities. NARAB streamlines regulatory hurdles facing insurance producers to operate across state lines, thus providing more options to consumers and promoting competition in the marketplace.

In 2015, bipartisan legislation was enacted—known as NARAB II—intended to provide “a mechanism through which licensing, continuing education, and other nonresident insurance producer qualification requirements and conditions may be adopted and applied on a multi-state basis without affecting the laws, rules, and regulation, and preserving the rights of a State” regarding insurance producer activities and conduct.

NARAB has been unable to reach its full potential due to challenges with maintaining a quorum for its governing board. The board is to be composed of eight current or former state insurance commissioners and five insurance industry representatives—a total of 13 individuals to be appointed by the president and confirmed by the Senate.

ACTION: The president, after consulting the Treasury secretary, should nominate appointees to NARAB to ensure the board maintains a quorum.