



May 5, 2010

The Honorable Tim Johnson
United States Senate
Washington, DC 20510

Dear Senator Johnson:

The undersigned organizations strongly urge the Senate to retain the Office of National Insurance (ONI) language in Title V of the Restoring American Financial Stability Act of 2010, as passed by the Senate Banking Committee, and vote against the amendment offered by Senator Merkley, which would substantially weaken the Office of National Insurance's power to address international issues that are critical to U.S. companies, and ultimately to U.S. consumers.

The United States is the world's largest insurance market and the largest consumer of reinsurance in the world. Today insurance and reinsurance are global businesses and play a critical role in maintaining the financial health of the U.S. insurance marketplace. Enabling the United States to engage in and conclude international regulatory agreements with foreign nations on prudential insurance measures that ensures uniform and equitable treatment for foreign and domestic insurers and reinsurers alike fosters the growth of the United States markets, as well as job creation. The National Association of Insurance Commissioners (NAIC) has testified that neither it nor any individual state regulator has the authority to enter into such binding international agreements on behalf of the United States. The ONI should, therefore, be empowered to effectuate international regulatory agreements on prudential insurance matters through appropriate preemption.

Interestingly, Senator Merkley's amendment acknowledges the importance of this issue by requiring the Director of the ONI to include in its annual report, "the status of international insurance prudential matters and negotiations, including on standard-setting." At the same time, unfortunately, Senator Merkley's amendment also strips the Office of the ability to address those issues in a meaningful way in the United States by making the limited preemption process effectively unattainable. The result is that no regulatory entity would be empowered to deal with important insurance international regulatory issues; this not only further undermines the credibility of the current state regulatory system, but it is not in the consumers' interest. The Senate Banking Committee language provides appropriate due process while still allowing for limited preemption to effectuate these important international insurance agreements.

Senator Merkley's amendment:

- Requires the ONI to navigate a procedural labyrinth before entering into the applicable international agreement -- including extensive notification/consultation with the United States Trade Representative, two Congressional committees and the insurance commissioners on what is essentially a regulatory, not a trade, issue – and then subjects that decision to a post-hoc Administrative Procedures Act notice and comment process.
- Subjects a preemption decision by the Director of the ONI to a de novo judicial review, ensuring that the Director's determination of inconsistency between the agreement and state law receives no deference at all;
- Defines the applicable international agreement as a written bilateral or multilateral agreement that: (1) provides for recognition of other countries' prudential measures with respect to the business of insurance or reinsurance; (2) protects insurance consumers; (3) promotes the integrity of and stability of the financial system; and (d) meets the regulatory goals of the States with respect to the comparable subject matter. Subsection (d) is particularly problematic because it is wholly dependent on a subjective state-by-state analysis of policy goals, leading to a number of questions: What are the goals of the States? Do all the States have the same goals? Are we certain that the goals of the States – even if we could identify them – are good prudential regulatory goals that align with the overall purpose of the legislation? Who decides whether the goals of the states have been met? Moreover, to the extent that an international agreement focuses on prudential reinsurance matters, this added standard inappropriately introduces the element of consumer protection in the United States into the reinsurance transaction, which is a business-to-business transaction.

Unlike Senator Merkley's proposed alternative, the ONI language currently in S. 3217 allows the ONI to exercise narrow preemption of State insurance measures in order to effectuate international regulatory agreements on prudential insurance matters under certain defined circumstances and with appropriate due process:

- A determination is made by the ONI Director that the measure results in less favorable treatment of a non-US insurer domiciled in a foreign jurisdiction that is subject to an International Insurance Agreement on Prudential Measures than a U.S. insurer domiciled, licensed or otherwise admitted in that State and the measure is inconsistent with an International Insurance Agreement on Prudential Measures.
- The preemption determination is made only after a comprehensive notice and comment process and is subject to the normal Administrative Procedures Act process and its judicial review process.

Significantly, there is also a savings provision setting forth specific state insurance measures that cannot be preempted, including measures that govern any insurer's rates, premiums, underwriting, or sales practices; any State coverage requirements for insurance; and the

application of State antitrust laws to the business of insurance; or any State insurance measure governing the capital or solvency of an insurer, except to the extent that such State insurance measure results in less favorable treatment of a non-United States insurer than a United State insurer. The Senate language also cannot be construed to alter, amend or limit any provision of the Consumer Financial Protection Agency Act of 2010. In short, contrary to how some groups have characterized the language in S. 3217, significant consumer protections remain intact and untouched.

In conclusion, the Senate language aligns more closely with the underlying purpose of the ONI's role on international insurance issues – to allow the United States to have a credible and authoritative voice in the global arena that enhances the continued viability of the United States insurance and reinsurance markets. Adoption of Senator Merkley's amendment, while well-intentioned, will undercut that goal and impair the ability of the United States to engage on important and pressing insurance regulatory matters.

Respectfully,

American Insurance Association
The Financial Services Roundtable
The Council of Insurance Agents & Brokers
Association of Bermuda Insurers & Reinsurers
American Bankers Insurance Association
Risk and Insurance Management Society, Inc.
American Council of Life Insurers
Reinsurance Association of America