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(Original Signature of Member)

119TH CONGRESS
2D SESSION

H. R.

To eliminate the Federal Insurance Office of the Department of the Treasury and to establish a United States Insurance Representative within the Department of the Treasury, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. DOWNING introduced the following bill; which was referred to the Committee on _____

A BILL

To eliminate the Federal Insurance Office of the Department of the Treasury and to establish a United States Insurance Representative within the Department of the Treasury, and for other purposes.

1 *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “McCarran-Ferguson
5 Restoration Act”.

1 SEC. 2. ELIMINATION OF FEDERAL INSURANCE OFFICE.

2 (a) IN GENERAL.—The Federal Insurance Office of
3 the Department of the Treasury, and the position of the
4 Director of the Federal Insurance Office, are hereby elimi-
5 nated.

6 (b) TREASURY AUTHORITY.—This section may not
7 be construed to repeal or otherwise limit any authority of
8 the Secretary of the Treasury with respect matters relat-
9 ing to insurance.

**10 SEC. 3. ESTABLISHMENT OF UNITED STATES INSURANCE
11 REPRESENTATIVE.**

12 Title 31, United States Code, is amended—

13 (1) in the table of sections for subchapter I of
14 chapter 3, by striking “Federal Insurance Office”
15 and inserting “United States Insurance Representa-
16 tive”; and

17 (2) by amending section 313 to read as follows:

18 “§ 313. United States Insurance Representative

19 “(a) IN GENERAL.—Not later than 1 year after the
20 date of the enactment of this section, the Secretary shall,
21 for the purpose of carrying out this section—

22 “(1) appoint an United States Insurance Rep-
23 resentative; and

24 “(2) hire and retain individuals with expertise
25 in matters related to insurance.

1 “(b) DUTIES.—The United States Insurance Rep-
2 resentative shall—

3 “(1) coordinate Federal efforts and develop
4 Federal policy on prudential aspects of international
5 insurance matters;

6 “(2) represent the United States Department of
7 the Treasury, as appropriate, in the International
8 Association of Insurance Supervisors (or a successor
9 entity);

10 “(3) assist the Secretary in negotiating covered
11 agreements;

12 “(4) determine whether State insurance meas-
13 ures are preempted by covered agreements;

14 “(5) assist the Secretary in administering the
15 Terrorism Insurance Program established in the De-
16 partment of the Treasury under the Terrorism Risk
17 Insurance Act of 2002 (15 U.S.C. 6701 note);

18 “(6) consult with the States (including State in-
19 surance regulators) with respect to insurance mat-
20 ters of national importance and prudential insurance
21 matters of international importance; and

22 “(7) advise the Secretary on prudential inter-
23 national insurance policy issues.

24 “(c) SCOPE.—The authority of the United States In-
25 surance Representative shall extend to prudential aspects

1 of all lines of insurance offered in the United States, ex-
2 cept—

3 “(1) health insurance, as determined by the
4 Secretary in coordination with the Secretary of
5 Health and Human Services based on section 2791
6 of the Public Health Service Act (42 U.S.C. 300gg-
7 91);

8 “(2) long-term care insurance, except long-term
9 care insurance that is included with life or annuity
10 insurance components, as determined by the Sec-
11 retary in coordination with the Secretary of Health
12 and Human Services, and in the case of long-term
13 care insurance that is included with such compo-
14 nents, the Secretary shall coordinate with the Sec-
15 retary of Health and Human Services in performing
16 the functions under this paragraph; and

17 “(3) crop insurance, as established by the Fed-
18 eral Crop Insurance Act (7 U.S.C. 1501 et seq).

19 “(d) PREEMPTION OF STATE INSURANCE MEAS-
20 URES.—

21 “(1) STANDARD.—A State insurance measure
22 shall be preempted pursuant to this paragraph or
23 section 314 if, and only to the extent that the
24 United States Insurance Representative determines,

1 in accordance with this paragraph, that the meas-
2 ure—

3 “(A) results in less favorable treatment of
4 a non-United States insurer domiciled in a for-
5 eign jurisdiction that is subject to a covered
6 agreement than a United States insurer domi-
7 ciled, licensed, or otherwise admitted in that
8 State; and

9 “(B) is inconsistent with a covered agree-
10 ment.

11 “(2) DETERMINATION.—

12 “(A) NOTICE OF POTENTIAL INCONSIST-
13 ENCY.—Before making any determination
14 under paragraph (1), the United States Insur-
15 ance Representative shall—

16 “(i) notify and consult with the appro-
17 priate State regarding any potential incon-
18 sistency or preemption;

19 “(ii) notify and consult with the
20 United States Trade Representative re-
21 garding any potential inconsistency or pre-
22 emption;

23 “(iii) publish in the Federal Register
24 a notice of the potential inconsistency or
25 preemption, including a description of each

1 State insurance measure at issue and any
2 applicable covered agreement;

7 (v) consider any comments received.

8 “(B) SCOPE OF REVIEW.—For purposes of
9 this subsection, any determination of the
10 United States Insurance Representative regard-
11 ing State insurance measures, and any preemp-
12 tion under clause (i) as a result of such deter-
13 mination, shall be limited to the subject matter
14 contained within the covered agreement involved
15 and shall achieve a level of protection for insur-
16 ance or reinsurance consumers that is substan-
17 tially equivalent to the level of protection
18 achieved under State insurance or reinsurance
19 regulation.

20 “(C) NOTICE OF DETERMINATION OF IN-
21 CONSISTENCY.—Upon making any determina-
22 tion under paragraph (1), the United States In-
23 surance Representative shall—

1 “(i) notify the appropriate State of
2 the determination and the extent of the in-
3 consistency;

4 “(ii) establish a reasonable period of
5 time, which shall not be less than 30 days,
6 before the determination shall become ef-
7 fective; and

8 “(iii) notify the Committees on Finan-
9 cial Services and Ways and Means of the
10 House of Representatives and the Commit-
11 tees on Banking, Housing, and Urban Af-
12 fairs and Finance of the Senate.

13 “(3) NOTICE OF EFFECTIVENESS.—Upon the
14 conclusion of the period referred to in paragraph
15 (2)(C)(ii), if the basis for such determination still
16 exists, the determination shall become effective and
17 the United States Insurance Representative shall—

18 “(A) publish a notice in the Federal Reg-
19 ister that the preemption has become effective,
20 as well as the effective date; and

21 “(B) notify the appropriate State of the
22 preemption of the State measure.

23 “(4) LIMITATION.—No State may enforce a
24 State insurance measure that has been preempted
25 under this subparagraph.

1 “(e) APPLICABILITY OF ADMINISTRATIVE PROCE-
2 DURES ACT.—Determinations of under subsection (d)
3 shall be subject to the applicable provisions of subchapter
4 II of chapter 5 of title 5, United States Code (relating
5 to administrative procedure), and chapter 7 of such title
6 (relating to judicial review), except that in any action for
7 judicial review of a determination of inconsistency, the
8 court shall determine the matter de novo.

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

12 “(g) CONSULTATION.—The United States Insurance
13 Representative shall consult with State insurance regu-
14 lators, individually or collectively, to the extent the United
15 States Insurance Representative determines appropriate,
16 in carrying out this paragraph.

17 “(h) RULES OF CONSTRUCTION.—Nothing in this
18 paragraph or section 314 shall be construed to—

19 “(1) alter, amend, or limit any provision of the
20 Consumer Financial Protection Agency Act of 2010;

21 “(2) affect the preemption of any State insur-
22 ance measure otherwise inconsistent with and pre-
23 emted by Federal law;

24 “(3) preempt—

- 1 “(A) any State insurance measure that
- 2 governs any insurer’s rates, premiums, under-
- 3 writing, or sales practices;
- 4 “(B) any State coverage requirements for
- 5 insurance;
- 6 “(C) the application of the antitrust laws
- 7 of any State to the business of insurance; or
- 8 “(D) any State insurance measure gov-
- 9 erning the capital or solvency of an insurer, ex-
- 10 cept to the extent that such State insurance
- 11 measure results in less favorable treatment of a
- 12 non-United States insurer than a United States
- 13 insurer;
- 14 “(4) provide the United States Insurance Rep-
- 15 resentative or the Department of the Treasury with
- 16 general supervisory or regulatory authority over the
- 17 business of insurance;
- 18 “(5) limit the authority of any Federal financial
- 19 regulatory agency, including the authority to develop
- 20 and coordinate policy, negotiate, and enter into
- 21 agreements with foreign governments, authorities,
- 22 regulators, and multinational regulatory committees
- 23 and to preempt State measures to affect uniformity
- 24 with international regulatory agreements; or

1 “(6) affect the authority of the Office of the
2 United States Trade Representative pursuant to sec-
3 tion 141 of the Trade Act of 1974 (19 U.S.C. 2171)
4 or any other provision of law, including authority
5 over the development and coordination of United
6 States international trade policy and the administra-
7 tion of the United States trade agreements program.

8 “(i) ANNUAL REPORT TO CONGRESS.—

9 “(1) PREEMPTION REPORTS.—Beginning on the
10 date that is 2 years after the date of the enactment
11 of this paragraph, and annually thereafter, the
12 United States Insurance Representative shall submit
13 a report to the President and to the Committees on
14 Financial Services and Ways and Means of the
15 House of Representatives and the Committees on
16 Banking, Housing, and Urban Affairs and Finance
17 of the Senate on any actions taken during the pre-
18 ceding 1-year period by the Representative pursuant
19 to subsection (d).

20 “(2) INTERNATIONAL INSURANCE REPORTS.—
21 Not later than 2 years after the date of the enact-
22 ment of this paragraph, the United States Insurance
23 Representative shall conduct a study and submit a
24 report to the Congress that describes—

1 “(A) any international coordination of in-
2 surance regulation; and

3 “(B) the international competitiveness of
4 United States insurers.

5 “(j) USE OF EXISTING RESOURCES.—To carry out
6 this paragraph, the United States Insurance Representa-
7 tive may use personnel, facilities, and any other resource
8 of the Department of the Treasury that are available to
9 the Secretary.

10 “(k) DEFINITIONS.—In this paragraph and section
11 314, the following definitions shall apply:

12 “(1) COVERED AGREEMENT.—The term ‘cov-
13 ered agreement’ means a written bilateral or multi-
14 lateral agreement regarding prudential measures
15 with respect to the business of insurance or reinsur-
16 ance that—

17 “(A) is entered into between the United
18 States and one or more foreign governments,
19 authorities, or regulatory entities; and

20 “(B) relates to the recognition of pruden-
21 tial measures with respect to the business of in-
22 surance or reinsurance that achieves a level of
23 protection for insurance or reinsurance con-
24 sumers that is substantially equivalent to the

1 level of protection achieved under State insur-
2 ance or reinsurance regulation.

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

6 “(3) FEDERAL FINANCIAL REGULATORY AGEN-
7 CY.—The term ‘Federal financial regulatory agency’
8 means the Department of the Treasury, the Board
9 of Governors of the Federal Reserve System, the Of-
10 fice of the Comptroller of the Currency, the Office
11 of Thrift Supervision, the Securities and Exchange
12 Commission, the Commodity Futures Trading Com-
13 mission, the Federal Deposit Insurance Corporation,
14 the Federal Housing Finance Agency, or the Na-
15 tional Credit Union Administration.

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

21 “(5) 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 “(6) STATE INSURANCE REGULATOR.—The
2 term ‘State insurance regulator’ means any State
3 regulatory authority responsible for the supervision
4 of insurers.

5 “(7) SUBSTANTIALLY EQUIVALENT TO THE
6 LEVEL OF PROTECTION ACHIEVED.—The term ‘sub-
7 stantially equivalent to the level of protection
8 achieved’ means the prudential measures of a for-
9 eign government, authority, or regulatory entity
10 achieve a similar outcome in consumer protection as
11 the outcome achieved under State insurance or rein-
12 surance regulation.

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

15 “(A) an insurer that is organized under
16 the laws of a State; or
17 “(B) a United States branch of a non-
18 United States insurer.”.

19 **SEC. 4. RELATED AMENDMENTS TO ELIMINATION OF FED-
20 ERAL INSURANCE OFFICE.**

21 (a) DODD-FRANK WALL STREET REFORM AND CON-
22 SUMER PROTECTION ACT AMENDMENTS.—The Dodd-
23 Frank Wall Street Reform and Consumer Protection Act
24 (12 U.S.C. 5301 et seq.) is amended—

25 (1) in section 165(i) (12 U.S.C. 5365(i))—

4 (B) in paragraph (2)(C), in the matter
5 preceding clause (i), by striking “and the Fed-
6 eral Insurance Office” and inserting “and the
7 Secretary of the Treasury”; and

12 (b) ECONOMIC GROWTH, REGULATORY RELIEF, AND
13 CONSUMER PROTECTION ACT AMENDMENTS.—Section
14 211(a) of the Economic Growth, Regulatory Relief, and
15 Consumer Protection Act (31 U.S.C. 313 note) is amend-
16 ed—

1 eral Insurance Office" each place that term occurs
2 and inserting the following: "the Secretary of the
3 Treasury and the Board of Governors of the Federal
4 Reserve System".

5 **SEC. 5. FINANCIAL STABILITY OVERSIGHT COUNCIL MEM-
6 BERSHIP.**

7 The Dodd-Frank Wall Street Reform and Consumer
8 Protection Act (12 U.S.C. 5301 et seq.) is amended—

9 (1) in section 111 (12 U.S.C. 5321)—

10 (A) in subsection (b)—

11 (i) in paragraph (1)—

12 (I) in subparagraph (I), by strik-
13 ing "and" at the end;

14 (II) in subparagraph (J), by
15 striking the period at the end and in-
16 serting ";" and"; and

17 (III) by adding at the end the
18 following:

19 "(K) a State insurance commissioner ap-
20 pointed by the President, by and with the ad-
21 vice and consent of the Senate, as described in
22 paragraph (4).";

23 (ii) in paragraph (2)—

24 (I) in subparagraph (B), to read
25 as follows:

1 “(B) the United States Insurance Rep-
2 resentative;”;
3 (II) by striking subparagraph
4 (C); and
5 (III) by redesignating subpara-
6 graphs (D) and (E) as subparagraphs
7 (C) and (D), respectively; and
8 (iii) by adding at the end the fol-
9 lowing:

10 “(4) APPOINTMENT OF STATE INSURANCE COM-
11 MISSIONER.—

12 “(A) IN GENERAL.—Before making any
13 appointments pursuant to paragraph (1)(K),
14 the President shall request a list of rec-
15 ommended candidates from the States through
16 the National Association of Insurance Commis-
17 sioners, which shall not be binding on the Presi-
18 dent.

19 “(B) FAILURE OF LIST SUBMISSION.—If
20 the National Association of Insurance Commis-
21 sioners fails to submit a list of recommenda-
22 tions not later than 15 business days after the
23 date of the request, the President may make
24 the requisite appointment without considering

1 the views of the National Association of Insur-
2 ance Commissioners.”; and

3 (B) in subsection (c)—

4 (i) in paragraph (1)—

5 (I) by inserting “, the State in-
6 surance commissioner shall serve a
7 term of 4 years” after “6 years”; and

8 (II) by striking “(C), (D), and
9 (E)” and inserting “(C) and (D)”;

10 and

11 (ii) by adding at the end the fol-
12 lowing:

13 “(5) ACTING STATE INSURANCE COMMISSIONER
14 MAY SERVE.—

15 “(A) IN GENERAL.—Notwithstanding sec-
16 tion 3345 of title 5, United States Code, in the
17 event of a vacancy of the State insurance com-
18 missioner of the Council or during the absence
19 or disability of the State insurance commis-
20 sioner of the Council, an acting State insurance
21 commissioner of the Council shall serve as a
22 nonvoting member of the Council until a suc-
23 cessor is appointed and confirmed.

24 “(B) SELECTION OF ACTING STATE INSUR-
25 ANCE COMMISSIONER.—The acting State insur-

5 “(6) TERM OF STATE INSURANCE COMMISSIONER.—Notwithstanding paragraph (1), if a successor to the State insurance commissioner of the Council is not appointed and confirmed by the end of the term of service of the commissioner, such member may continue to serve until the earlier of—

11 “(A) 18 months after the date on which

12 the term of service ends; or

15 (2) in section 112 (12 U.S.C. 5322)—

16 (A) in subsection (a)(2)(A), by striking
17 “member agencies, other Federal and State fi-
18 nancial regulatory agencies, the Federal Insur-
19 ance Office” and inserting the following: “mem-
20 ber agencies and other Federal and State finan-
21 cial regulatory agencies”; and

22 (B) in subsection (d)—

23 (i) in paragraph (1), in the matter
24 preceding subparagraph (A), by striking
25 "the Office of Financial Research, member

