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IN FOCUS

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Introduction to Financial Services: Insurance

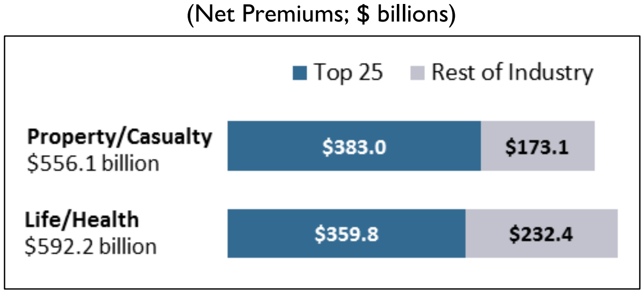
This In Focus provides a summary of the insurance market and regulatory system in the United States.

Market Structure

Insurance companies constitute a major segment of the U.S. financial services industry. The insurance industry is often separated into two parts: *life and health insurance* (life/health), which also includes annuity products, and *property and casualty insurance* (property/casualty), which includes most other lines of insurance, such as homeowners insurance, automobile insurance, and various commercial lines of insurance purchased by businesses. According to the insurance rating agency A.M. Best, 2017 net premiums for the more than 300 life/health companies (with over 800 subsidiaries) in the United States totaled $592.2 billion, with admitted assets totaling $7.07 trillion. The 2017 net premiums for the more than 1,000 property/casualty insurance companies (with over 2,800 subsidiaries) totaled $556.1 billion, with admitted assets totaling $1.98 trillion. Despite the large numbers of insurance companies, both life/health and property/casualty insurance are also reasonably concentrated industries, with the top 25 life/health company groups writing 61% of overall premiums and the top 25 property/casualty company groups writing 69% of overall premiums. **Figure 1** displays the market share of the top 25 insurers versus the rest of the market in 2017.

Figure 1. Insurance Market Concentration

(Net Premiums; $ billions)



Source: CRS using data for 2017 from A.M. Best.

Different lines of insurance present very different characteristics and risks. Life insurance typically is a longer-term proposition with contracts stretching over decades and insurance risks that are relatively well defined in actuarial tables. Annuity products, which are also usually offered by life insurers, present similar long-term insurance risks. Particular life insurance and annuity products, however, may be based on securities like stocks or bonds, and thus may present shorter-term risks more similar to investment products for both the consumer and the insurer. Property/casualty insurance typically is a shorter-term proposition with six-month H.R. 6292 or one-year contracts and greater exposure to catastrophic risks.

Health insurance has evolved in a very different direction than life and property/casualty insurance. Many health insurance companies are heavily involved with healthcare delivery, including negotiating contracts with physicians and hospitals, rather than purely insurance operations. The health insurance regulatory system is much more influenced by the federal government through Medicare, Medicaid, the Employee Retirement Income Security Act of 1974 (ERISA; P.L. 93-406), and the Patient Protection and Affordable Care Act (ACA; P.L. 111-148). The following discussion addresses primarily property/casualty and life insurance.

Role of Federal and State Governments

The role of the federal government in regulating private insurance is relatively limited compared with its role in banking and securities. Insurance companies, unlike banks and securities firms, have been chartered and regulated solely by the states for the past 150 years. There are no federal regulators of insurance akin to those for securities or banks, such as the Securities and Exchange Commission (SEC) or the Office of the Comptroller of the Currency (OCC), respectively.

Each state government has a department or other entity charged with licensing and regulating insurance companies and those individuals and companies selling insurance products. States regulate the solvency of the companies and the content of insurance products as well as the market conduct of companies. Although each state sets its own laws and regulations for insurance, the National Association of Insurance Commissioners (NAIC) acts as a coordinating body that sets national standards through model laws and regulations. Models adopted by the NAIC, however, must be enacted by the states before having legal effect, which can be a lengthy and uncertain process. The states have also developed a coordinated system of guaranty funds, designed to protect policyholders in the event of insurer insolvency.

The limited federal role stems from both Supreme Court decisions and congressional action. In the 1868 case *Paul v. Virginia*, the Court found that insurance was not considered interstate commerce, and thus not subject to federal regulation. This decision was effectively reversed in the Court's 1944 decision, *U.S. v. South-Eastern Underwriters Association.* In 1945, Congress passed the McCarran-Ferguson Act (15 U.S.C. §§1011 et seq.) specifically preserving the states' authority to regulate and tax insurance and also granting a federal antitrust exemption to the insurance industry for "the business of insurance."

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank, P.L. 111-203) in 2010 significantly altered the overall financial regulatory structure in the United States, but it largely left the state-centered insurance regulatory structure intact. The areas where the act did affect insurance regulation include (1) enhanced systemic risk regulatory authority, including authority over insurers, was vested in the Federal Reserve and in the Financial Stability Oversight Council (FSOC), a new council of regulators headed by the Treasury Secretary; (2) oversight of bank and thrift holding companies, including companies with insurance subsidiaries, was consolidated in the Federal Reserve with new capital requirements added; and (3) a new Federal Insurance Office (FIO) was created within the Treasury Department. The Dodd-Frank Act also included measures affecting the states' oversight of surplus lines insurance and reinsurance.

Policy Issues

Recent congressional attention to insurance regulatory issues can be broken into three broad areas:

Dodd-Frank Act Implementation. Among these issues are

1. *The treatment of insurers under Dodd-Frank's systemic risk regime*. Under the act's provisions, the FSOC designated three insurers for enhanced regulation by the Federal Reserve (known as systemically important financial institutions or SIFIs). Since the initial designations, one insurer's designation was rescinded by a court decision and two were rescinded by FSOC.
2. *The application of new holding company capital standards to insurers.* Banking and insurance present different risk profiles, and it is generally accepted that they require different capital standards. The Federal Reserve put forth an advance notice of proposed rulemaking outlining possible capital standards for insurers, but no such standards have been finalized.
3. *The role of the Federal Insurance Office and the Federal Reserve.* Dodd-Frank gave the FIO a number of roles both domestically and internationally. Exactly how the mandates are applied and how the FIO interacts with existing actors like the NAIC, the International Association of Insurance Supervisors (IAIS), and the United States Trade Representative (USTR), however, are not clear from the statute. Dodd-Frank also resulted in the Federal Reserve taking a role overseeing many more insurers than it had in the past.

Some frictions have been reported in this new system, particularly between state regulators and the new federal actors in the international arena. To date, neither the FIO nor the Federal Reserve have used significant portions of their authority, such as FIO's preemption authority related to international covered agreements or the actual application of Federal Reserve capital standards to some insurers. At this time, no insurer is designated for enhanced regulation.

Targeted Federal Legislation Changing the State Regulatory System. The 50-state system of insurance regulation has been particularly criticized on efficiency grounds due to perceived duplicative and burdensome regulation between states. This has resulted in past proposals ranging from a full federal chartering system for insurers to narrower targeted efforts to simplify the state system. Examples of such proposed legislation from recent Congresses has included (1) creation of a National Association of Registered Agents and Brokers (NARAB) to reduce the need for multiple licensures of insurance agents and (2) expansion of the federal Liability Risk Retention Act, which preempts state insurance company licensure laws for a small subset of insurance companies. The 114th Congress included NARAB provisions in Title II of H.R. 26, which was enacted as P.L. 114-1 on January 12, 2014. Congress has not acted on bills to expand the Liability Risk Retention Act, such as in the 115th Congress.

Response to International Developments. In 2017, the United States and the European Union (EU) concluded a covered agreement particularly addressing issues around U.S. collateral requirements for non-U.S. insurers and EU supervisory requirements for non-EU insurers under the EU Solvency II regulatory modernization program. This agreement provoked opposition by the states and some portion of the insurance industry. On a separate but somewhat interrelated track, the IAIS has been developing new supervisory and capital standards for insurers which some fear could disadvantage the U.S. system. The 115th Congress held hearings on the covered agreement but did not take direct legislative action to change the agreement. P.L. 115-174 was passed directing federal negotiators to achieve consensus with the states in international standard setting negotiations.

CRS Resources

CRS Report R44958, *Insurance Regulation: Legislation in the 115th Congress*, by Baird Webel

CRS Report R44820, *Selected International Insurance Issues in the 115th Congress*, by Baird Webel and Rachel F. Fefer

CRS Report R41372, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Insurance Provisions*, by Baird Webel

CRS Report RL32237, *Health Insurance: A Primer*, by Bernadette Fernandez

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