

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 5143  
OFFERED BY MR. LUETKEMEYER OF MISSOURI**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Transparent Insurance  
3 Standards Act of 2016”.

**4 SEC. 2. CONGRESSIONAL FINDINGS.**

5 The Congress finds the following:

6 (1) The State-based system for insurance regu-  
7 lation in the United States has served American con-  
8 sumers well for more than 150 years and has fos-  
9 tered an open and competitive marketplace with a  
10 diversity of insurance products to the benefit of pol-  
11 icyholders and consumers.

12 (2) Protecting policyholders by regulating to en-  
13 sure an insurer’s ability to pay claims has been the  
14 hallmark of the successful United States system and  
15 should be the paramount objective of domestic pru-  
16 dential regulation and emerging international stand-  
17 ards.

1           (3) United States officials participating in dis-  
2           cussions or negotiations regarding international in-  
3           surance standards shall support standards designed  
4           for the protection of policyholders.

5           (4) The Secretary of the Treasury shall seek  
6           advice and recommendations from a diverse group of  
7           outside experts in performing the duties and au-  
8           thorities of the Secretary to coordinate Federal ef-  
9           forts and develop Federal policy on prudential as-  
10          pects of international insurance matters.

11          (5) The draft of the Higher Loss Absorbency  
12          capital standard adopted in 2015 by the Inter-  
13          national Association of Insurance Supervisors, not-  
14          withstanding the concerns of U.S. parties to the  
15          International Association of Insurance Supervisors,  
16          unequally affects insurance products offered in the  
17          United States, an issue that must be addressed.

18          (6) Any international standard agreed to at the  
19          International Association of Insurance Supervisors is  
20          not self-executing in the United States for any in-  
21          surer until implemented through the required Fed-  
22          eral or State legislative or regulatory process.

1 **SEC. 3. OBJECTIVES FOR INTERNATIONAL INSURANCE**  
2 **STANDARDS.**

3 The objectives of the United States regarding inter-  
4 national insurance standards are as follows:

5 (1) To ensure standards that maintain strong  
6 protection of policy holders, as reflected in the  
7 United States solvency regime.

8 (2) To ensure, pursuant to enactment of the In-  
9 surance Capital Standards Clarification Act of 2014  
10 (Public Law 113–279), standards that are appro-  
11 priate for insurers and are not bank-centric in na-  
12 ture.

13 (3) To promote a principles-based approach to  
14 insurance supervision, in which capital adequacy is  
15 assessed using risk-based capital requirements for  
16 insurance combined with qualitative risk assessment  
17 and management tools.

18 (4) To consider the most efficient and least dis-  
19 ruptive approaches to enhancing regulatory assess-  
20 ment of the capital adequacy of insurance groups,  
21 including tools that are already in place.

22 (5) To ensure that any international insurance  
23 standard recognizes prudential measures used within  
24 the United States as satisfying standards finalized  
25 by international standard-setting organizations.

1           (6) To support increasing transparency at any  
2           global insurance or international standard-setting or-  
3           ganization in which the United States participates,  
4           including advocating for greater stakeholder public  
5           observer access to working groups and committee  
6           meetings of the International Association of Insur-  
7           ance Supervisors.

8           (7) To ensure that there is a sufficient period  
9           for public consultation and comment regarding any  
10          proposed international insurance standard before it  
11          takes effect.

12          (8) To ensure that the Secretary of the Treas-  
13          ury and the Board of Governors of the Federal Re-  
14          serve System achieve consensus positions with State  
15          insurance commissioners when the Secretary and the  
16          Board are United States participants in discussions  
17          on insurance issues before the International Associa-  
18          tion of Insurance Supervisors, Financial Stability  
19          Board, or any other international forum of financial  
20          regulators or supervisors that considers such issues.

21          (9) To consider the impact of any such stand-  
22          ard on the availability and cost of products to con-  
23          sumers.

24          (10) To avoid measures that could limit the  
25          availability and accessibility of risk protection and

1 retirement security products that are essential to  
2 meeting the needs of aging populations.

3 (11) To ensure that the merits of existing  
4 State-based capital standards are recognized and in-  
5 corporated in any domestic or global insurance cap-  
6 ital standard.

7 (12) To advocate for insurance regulatory  
8 standards that are based on the nature, scale, and  
9 complexity of the risks posed by the regulated insur-  
10 ance group and entity or activity.

11 **SEC. 4. REQUIREMENTS FOR CONSENT TO ADOPT INTER-**  
12 **NATIONAL INSURANCE STANDARDS.**

13 (a) PUBLICATION OF STANDARDS; ADOPTION OF  
14 CAPITAL AND PRUDENTIAL STANDARDS.—The United  
15 States may not agree to, accept, establish, enter into, or  
16 consent to the adoption of a final international insurance  
17 standard with an international standard-setting organiza-  
18 tion or a foreign government, authority, or regulatory enti-  
19 ty unless the requirements under both of the following  
20 paragraphs are complied with:

21 (1) PUBLICATION.—The requirements under  
22 this paragraph are complied with if the conditions  
23 under one of the following subparagraphs have been  
24 met:

1           (A) BY FEDERAL RESERVE AND TREAS-  
2           URY.—The Chairman of the Board of Gov-  
3           ernors of the Federal Reserve System and the  
4           Secretary of the Treasury have caused the pro-  
5           posed text of the proposed final international  
6           insurance standard to be published in the Fed-  
7           eral Register and made available for public  
8           comment for a period of not fewer than 30 days  
9           (which period may run concurrently with the  
10          90-day period referred to in subsection (b)(3)).

11          (B) BY STATE INSURANCE COMMIS-  
12          SIONERS.—The State insurance commissioners  
13          have caused the proposed text of the proposed  
14          international insurance standard to be pub-  
15          lished in a similar form and manner that pro-  
16          vides for notice and public comment.

17          (2) CAPITAL STANDARD.—In the case only of a  
18          final international insurance standard setting forth  
19          any capital standard or standards for insurers—

20                 (A) such international capital standard is  
21                 consistent with capital requirements set forth in  
22                 the State-based system of insurance regulation;

23                 (B) the Board has issued capital require-  
24                 ments for insurance companies supervised by  
25                 the Board and subject to such requirements,

1           which shall be issued through rulemaking in ac-  
2           cordance with the procedures established under  
3           section 553 of title 5, United States Code, re-  
4           garding substantive rules, under which the peri-  
5           ods for notice and public comment shall each  
6           have a duration of not fewer than 60 days; and

7           (C) to the extent that such international  
8           capital standard is intended to be applied to a  
9           company or companies supervised by the Board  
10          of Governors of the Federal Reserve System, is  
11          consistent with the capital requirements of the  
12          Board for such companies.

13          (b) SUBMISSION AND LAYOVER PROVISIONS.—The  
14          Secretary and the Board may not agree to, accept, estab-  
15          lish, enter into, or consent to the adoption of an inter-  
16          national insurance standard established through an inter-  
17          national standard-setting organization or a foreign govern-  
18          ment, authority, or regulatory entity unless—

19                (1) the Secretary and the Board have—

20                    (A) conducted an analysis under subsection  
21                    (c) of the proposed international insurance  
22                    standard; and

23                    (B) submitted to the covered congressional  
24                    committees, on a day on which both Houses of  
25                    Congress are in session, a copy of the proposed

1 final text of the proposed international insur-  
2 ance standard and the report required under  
3 subsection (c)(2) regarding such analysis;

4 (2) the Secretary and the Chairman of the  
5 Board have determined, pursuant to such analysis,  
6 that the proposed standard will not result in any  
7 change in State law;

8 (3) with respect to a capital standard under  
9 subsection (a)(2), the Secretary and the Chairman  
10 of the Board certify that the proposed international  
11 capital standard is designed solely to help ensure  
12 that sufficient funds are available to pay claims to  
13 an insurer's policyholders in the event of the liquida-  
14 tion of that entity; and

15 (4) a period of 90 calendar days beginning on  
16 the date on which the copy of the proposed final text  
17 of the standard is submitted to the covered congress-  
18 sional committees under paragraph (1)(B) has ex-  
19 pired, during which period the Congress may take  
20 action to approve or reject such final standard.

21 (c) JOINT ANALYSIS BY CHAIR OF THE FEDERAL  
22 RESERVE AND SECRETARY OF THE TREASURY.—

23 (1) IN GENERAL.—An analysis under this sub-  
24 section of a proposed final international insurance  
25 standard shall be an analysis conducted by the Sec-



1       retary and the Chairman of the Board of Governors  
2       of the Federal Reserve System, in consultation with  
3       the State insurance commissioners, of the impact of  
4       such standard on consumers and markets in the  
5       United States and whether any changes in State law  
6       will result from such final standard.

7           (2) REPORT.—Upon completion of an analysis  
8       under this subsection of a final international insur-  
9       ance standard, the Secretary and the Board shall  
10      submit a report on the results of the analysis to the  
11      covered congressional committees and the Comp-  
12      troller General of the United States. The report  
13      shall include a statement setting forth the deter-  
14      mination made pursuant to paragraph (1) regarding  
15      any changes in State law resulting from such final  
16      standard.

17           (3) NOTICE AND COMMENT.—

18           (A) NOTICE.—The Secretary and the  
19      Chairman of the Board of Governors of the  
20      Federal Reserve System shall provide notice be-  
21      fore the date on which drafting the report is  
22      commenced and after the date on which the  
23      draft of the report is completed.

24           (B) OPPORTUNITY FOR COMMENT.—There  
25      shall be an opportunity for public comment for

1 a period beginning on the date on which the re-  
2 port is submitted under paragraph (2) and end-  
3 ing on the date that is not fewer than 60 days  
4 after the date on which the report is submitted.  
5 Nothing in this subparagraph shall affect the  
6 authority of the Board to issue the rule referred  
7 to in subsection (a)(2).

8 (4) REVIEW BY COMPTROLLER GENERAL.—

9 Upon submission of a report pursuant to paragraph  
10 (2) to the Comptroller General, the Comptroller  
11 General shall review the report and shall submit a  
12 report to the Congress setting forth the conclusions  
13 of the Comptroller General's review.

14 (d) LIMITED EFFECT.—This section may not be con-  
15 strued to establish or expand any authority to implement  
16 an international insurance standard in the United States  
17 or for the United States or any representative of the Fed-  
18 eral Government to adopt or enter into any international  
19 insurance standard.

20 (e) TREATMENT OF STATE LAW.—In accordance  
21 with the Act of March 9, 1945 (Chapter 20; 59 Stat. 33;  
22 15 U.S.C. 1011 et seq.), commonly referred to as the  
23 “McCarran-Ferguson Act”, this section may not be con-  
24 strued to preempt State law.

1 **SEC. 5. REPORTS.**

2 (a) REPORTS AND TESTIMONY BY SECRETARY OF  
3 THE TREASURY AND CHAIR OF THE FEDERAL RE-  
4 SERVE.—The Secretary and the Chairman of the Board  
5 of Governors of the Federal Reserve System shall submit  
6 to the covered congressional committees an annual report  
7 and provide testimony, not less often than every 6 months,  
8 to the covered congressional committees on the efforts of  
9 the Secretary and the Chairman with the State insurance  
10 commissioners with respect to international insurance  
11 standard-setting organizations and international insur-  
12 ance standards, including—

13 (1) a description of the insurance standard-set-  
14 ting issues under discussion at international stand-  
15 ard-setting bodies, including the Financial Stability  
16 Board and the International Association of Insur-  
17 ance Supervisors;

18 (2) a description of the effects that inter-  
19 national insurance standards could have on con-  
20 sumers and insurance markets in the United States;

21 (3) a description of any position taken by the  
22 Secretary and the Board in international insurance  
23 discussions or on any international insurance stand-  
24 ard;

25 (4) a description of the efforts by the Secretary  
26 and the Board to increase transparency and ac-

1       countability at the Financial Stability Board with re-  
2       spect to insurance proposals and the International  
3       Association of Insurance Supervisors, including ef-  
4       forts to provide additional public access to working  
5       groups and committees of the International Associa-  
6       tion of Insurance Supervisors; and

7               (5) a description of how the Secretary and the  
8       Board are meeting the objectives set forth in section  
9       3, or, if such objectives are not being met, an expla-  
10      nation of the reasons for not meeting such objec-  
11      tives.

12      (b) REPORTS AND TESTIMONY BY STATE INSURANCE  
13      COMMISSIONERS.—The State insurance commissioners  
14      may provide testimony or reports to the Congress on the  
15      issues described in subsection (a).

16      (c) REPORT ON TRANSPARENCY.—Not later than  
17      180 days after the date of enactment of this Act, the  
18      Chairman of the Board of Governors of the Federal Re-  
19      serve System and the Secretary shall submit to the Con-  
20      gress a report and provide testimony to the Congress on  
21      the efforts of the Chairman and the Secretary pursuant  
22      to subsection (a)(4) of this section to increase trans-  
23      parency at meetings of the International Association of In-  
24      surance Supervisors.

1 **SEC. 6. DEFINITIONS.**

2 In this Act:

3 (1) BOARD.—The term “Board” means the  
4 Board of Governors of the Federal Reserve System,  
5 or the designee of the Board.

6 (2) COVERED CONGRESSIONAL COMMITTEES.—  
7 The term “covered congressional committees” means  
8 the Committee on Financial Services of the House of  
9 Representatives and the Committee on Banking,  
10 Housing and Urban Affairs of the Senate.

11 (3) INTERNATIONAL INSURANCE STANDARD.—  
12 The term “international insurance standard” means  
13 any international insurance supervisory standard de-  
14 veloped by an international standards setting organi-  
15 zation, or regulatory or supervisory forum, in which  
16 the United States participates, including the Com-  
17 mon Framework for the Supervision of Internation-  
18 ally Active Insurance Groups, the Financial Stability  
19 Board, and the International Association of Insur-  
20 ance Supervisors.

21 (4) SECRETARY.—The term “Secretary” means  
22 the Secretary of the Treasury, or the Secretary’s  
23 designee.

24 (5) STATE INSURANCE COMMISSIONERS.—The  
25 term “State insurance commissioners” means the

1 heads of the State insurance departments or their  
2 designees acting at their direction.

3 **SEC. 7. TREATMENT OF COVERED AGREEMENTS.**

4 Section 314 of title 31, United States Code is amend-  
5 ed—

6 (1) in subsection (c)—

7 (A) by designating paragraphs (1) and (2)  
8 as paragraphs (2) and (3), respectively; and

9 (B) by inserting before paragraph (2), as  
10 so redesignated, the following new paragraph:

11 “(1) the Secretary of the Treasury and the  
12 United States Trade Representative have caused to  
13 be published in the Federal Register, and made  
14 available for public comment for a period of not  
15 fewer than 30 days (which period may run concu-  
16 rrently with the 90-day period for the covered agree-  
17 ment referred to in paragraph (3)), the proposed  
18 text of the covered agreement;” and

19 (2) by adding at the end the following new sub-  
20 sections:

21 “(d) CONSULTATION WITH STATE INSURANCE COM-  
22 MISSIONERS.—In any negotiations regarding a con-  
23 templated covered agreement, the Secretary and the  
24 United States Trade Representative shall consult with and  
25 directly include State insurance commissioners.

1           “(e) PROHIBITION ON REGULATORY AUTHORITY.—  
2 In accordance with subsections (k) and (l) of section 313,  
3 a covered agreement shall not be used to establish or pro-  
4 vide the Federal Insurance Office or the Treasury with  
5 any general supervisory or regulatory authority over the  
6 business of insurance or with the authority to participate  
7 in a supervisory college or similar process.

8           “(f) TREATMENT UNDER OTHER LAW.—A covered  
9 agreement shall not be considered an international insur-  
10 ance standard for purposes of the Transparent Insurance  
11 Standards Act of 2016 and shall not be subject to such  
12 Act.”.

13 **SEC. 8. DUTIES OF INDEPENDENT MEMBER OF FINANCIAL**  
14 **STABILITY OVERSIGHT COUNCIL.**

15           Subsection (a) of section 112 of the Dodd-Frank Wall  
16 Street Reform and Consumer Protection Act (12 U.S.C.  
17 5322(a)) is amended by adding at the end the following  
18 new paragraph:

19           “(3) DUTIES OF INDEPENDENT MEMBER.—To  
20 assist the Council with its responsibilities to monitor  
21 international insurance developments, advise Con-  
22 gress, and make recommendations, the Independent  
23 Member of the Council shall have the authority to—

1           “(A) regularly consult with international  
2 insurance supervisors and international finan-  
3 cial stability counterparts;

4           “(B) consult with, advise, and assist the  
5 Secretary of the Treasury with respect to rep-  
6 resenting the Federal Government of the  
7 United States, as appropriate, in the Inter-  
8 national Association of Insurance Supervisors  
9 (including to become a non-voting member  
10 thereof), particularly on matters of systemic  
11 risk, and to consult with the Board of Gov-  
12 ernors of the Federal Reserve System and the  
13 States concerning such matters;

14           “(C) attend the Financial Stability Board  
15 of The Group of Twenty and join with other  
16 members from the United States, including on  
17 matters related to insurance and financial sta-  
18 bility, and provide for the attendance and par-  
19 ticipation at such Board, on matters related to  
20 insurance and financial stability, of State insur-  
21 ance commissioners; and

22           “(D) attend, with the United States dele-  
23 gation, the Organization for Economic Coopera-  
24 tion and Development and observe and partici-  
25 pate at the Insurance and Private Pensions



1           Committee of such Organization on matters re-  
2           lated to insurance and financial stability.”.

3 **SEC. 9. STATE INSURANCE REGULATOR INVOLVEMENT IN**  
4           **INTERNATIONAL STANDARD SETTING.**

5           Parties representing the United States at the Finan-  
6           cial Stability Board of the Group of Twenty on matters,  
7           and in meetings, related to insurance and financial sta-  
8           bility shall consult with, and seek to include in such meet-  
9           ings, the State insurance commissioners.

10 **SEC. 10. RULE OF CONSTRUCTION.**

11           Nothing in this Act or the amendments made by this  
12           Act may be construed to support or endorse the domestic  
13           capital standard for insurers referred to in section 4(a)(2)  
14           or any such domestic capital standards established by the  
15           Board.

