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Treasury's Draft Legislation: Consumer Financial Protection Agency Act of 2009 Key Points Relative to Insurers July 1, 2009

- **The business of insurance is specifically excluded from the Agency's authority to regulate consumer financial products or services under the Act.**
 - The Consumer Financial Protection Agency (the "Agency") is established "to regulate the provision of **consumer financial products or services.**" (Sec. 1011(a))
 - "Consumer financial product or service" is defined to mean "any **financial product or service** to be used by a consumer primarily for personal, family or household purposes." (Sec. 1002(8))
 - "Financial product or service" is defined to mean "any product or service that, directly or indirectly, results from or is related to engaging in 1 or more **financial activities.**" (Sec. 1002(19))
 - The legislation provides a laundry list of activities that are defined to be "financial activities." The definition includes a catch all that gives the Agency the power by rule to deem other activities not listed in the legislation as "financial activities." The catch all states, however, that "the Agency shall not define engaging in the business of insurance as a financial activity (other than with respect to credit insurance, mortgage insurance, or title insurance, as described in this section)." (Section 1002(18)(O))

- **Entities engaged in the business of insurance should not be subject to the Agency's reporting requirements for "nondepository covered persons."**
 - The Agency's reporting requirements extend to "nondepository **covered persons.**" (Sec. 1022(c)(4))
 - A "covered person" is "any person who engages directly or indirectly in **financial activity**, in connection with the provision of a consumer financial product or service." (Sec. 1002(9))
 - As discussed above, the business of insurance has been excluded from the definition of "financial activity."

- **The authority over consumer financial protection currently vested in the state insurance regulators is not transferred to the Agency.**
 - Section 1061 transfers the consumer financial protection authority from several agencies to the Agency, including the following:
 - Board of Governors (Federal Reserve)
 - OCC
 - OTS
 - FDIC
 - FTC
 - NCUA

- **In making conforming revisions to existing statutes impacted by the Act, the Act recognizes state insurance regulators' ongoing authority over insurance products and annuities, separate and apart from the Agency's authority.**
 - A significant portion of the Act is devoted to making corresponding changes to existing statutes impacted by the Act, including The Fair Credit Reporting Act. (Section 1082)
 - Section 1082(d) amends the Fair Credit Reporting Act to reflect the Agency's authority, but specifically preserves state authority over insurance. Certain determinations are to be made "by the [CFPA] (with respect to any covered person subject to the jurisdiction of such agency ... or the applicable State insurance authority (with respect to any person engaged in providing insurance or annuities))."