



July 15, 2009

The Honorable Christopher Dodd
 Chairman
 Senate Committee on Banking,
 Housing, and Urban Affairs
 Washington, DC 20510

The Honorable Richard Shelby
 Ranking Member
 Senate Committee on Banking,
 Housing, and Urban Affairs
 Washington, DC 20510

The Honorable Barney Frank
 Chairman
 House Committee on Financial Services
 Washington, DC 20515

The Honorable Spencer Bachus
 Ranking Member
 House Committee on Financial Services
 Washington, DC 20515

Dear Chairman Dodd, Chairman Frank, Ranking Member Shelby, and Ranking Member Bachus:

On June 30, the Treasury Department released legislative text to establish a Consumer Financial Protection Agency (CFPA). The undersigned organizations favor strong consumer protection measures for insurance. But for the reasons that follow, we oppose inclusion of any line of insurance in the CFPA.

The proposed legislation quite appropriately attempts to exclude insurance, as insurance is a very different product from the financial products intended to be regulated under the proposal. Despite the clear, logical intent to separate out insurance, the scope of “financial activity” contained within the proposal nonetheless includes mortgage, title and credit insurance. (See Sec. 1002(18)(B)(ii) and (O)). A distinct possibility also exists that other forms of insurance could be swept under the CFPA’s jurisdiction, to the extent one is deemed a “financial advisor” “providing financial or other related advisory services” or “tax-planning” services. (See Sec. 1002(18)(I)).

Both lenders and insurers aim to allow a consumer to participate in financial transactions and other activities; however they deliver very different products. Importantly, insurance is not an extension of credit. Rather, insurance protects against risk of loss. The fact that some insurance protection covers risks surrounding a credit transaction does not alter the essence of the insurance product -- a promise to provide protection in the event of a specified loss.

Given this distinction, no forms of insurance should be included within the CFPA mandate – including mortgage, title and credit insurance.

We also ask that the legislative language of the proposal be tightened to ensure that the statutory intent is fulfilled. To the extent the CFPA's authority covers products that do not involve a direct extension of credit, the slippery-slope debate over the intended scope of the proposed legislation will likely generate lengthy litigation where the courts will ultimately make that determination. This is especially true where the definitions of terms like "financial advisor," "business of insurance" and "credit insurance" leave room for interpretation and confusion.

This problem is compounded for terms like the "business of insurance" where there are no statutory boundaries, and the CFPA itself determines what activity falls within the scope of the "business of insurance." Vesting the CFPA with authority to define the parameters of this term may lead to an expansion of the CFPA's incursion into insurance, and any judicially-contested determination may be afforded administrative deference by the courts.

Moreover, insurers do not collect demographic data about policyholder race or ethnicity. Indeed, efforts are made to use underwriting and rating tools that expressly avoid gathering this information. Yet, it appears that it is possible that the CFPA may require any financial institution that engages in any "financial activity" to inquire about whether a "business is a women or minority-owned business" and to maintain records of these personal characteristics. (See Sec. 1072 addressing small business data collection amending the Equal Credit Opportunity Act). The scope of this provision is too broad, again going beyond lending activity.

For banking products, the CFPA legislative proposal contemplates regulatory jurisdiction that is bifurcated between the federal banking agencies (with prudential oversight) and the CFPA (with consumer protection oversight). This is not the case with insurance. Instead, the authority of the CFPA is simply overlaid on top of the state regulatory system without a construct or even a floor. As a result, inclusion of insurance products will result in a duplicative regulatory regime with insurers, producers and consumers caught in the middle. At a bare minimum, the CFPA will increase the potential for different and inconsistently-applied consumer protection standards for all insurers and producers, whether those insurers or producers do business locally, regionally, nationally, or globally.

Consumers are best protected when they know their rights and the businesses that serve them know their responsibilities, and both act accordingly. Regulation should not be overlapping and duplicative because it wastes consumers' premium dollars that could otherwise support the offering of additional product and service choices and lower costs for consumers. A good regulatory system should foster conditions that encourage investment, competition and innovation, and not perpetuate duplication, inconsistency, and waste.

In conclusion, we are encouraged that the CFPA legislation excludes most lines of insurance in recognition of the existing consumer protection standards that already apply to insurers and

producers; however no insurance products or practices should be included in the CFPA. The legislative language must be tightened to help prevent any adverse effects, and to implement the statutory intent of the proposal.

Respectfully,

Association for Advanced Life Underwriting
American Council of Life Insurers
Agents for Change
American Insurance Association
American Land Title Association
Consumer Credit Industry Association
The Council of Insurance Agents & Brokers
National Association of Insurance and Financial Advisors
National Association of Mutual Insurance Companies
National Association of Independent Life Brokerage Agencies
NAVA – The Association for Insured Retirement Solutions
Professional Insurance Agents
Property Casualty Insurers Association of America

CC:

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