

The Obama Administration's Financial Regulatory Reform Plan and its Impact on the Insurance Industry

On June 17, 2009, the U.S. Treasury Department released a proposal entitled "*Financial Regulatory Reform, A New Foundation: Rebuilding Financial Supervision and Regulation*" (referred to in this Client Alert as "the Plan"). The 88-page document details the Obama Administration's plan to reform and strengthen the regulation of financial services in the United States and is the first stage of what is expected to be a long and contentious legislative process. The Plan includes the following proposals applicable to the insurance industry:

1. The Establishment of an Office of National Insurance (ONI) within the Treasury Department. Under the Plan, the new ONI would have a largely advisory role with respect to the insurance industry. Specifically, the ONI would be responsible for gathering information on the insurance industry and identifying potential "problems or gaps in regulation that could contribute to a future (financial) crisis". The ONI would also recommend whether any insurance companies should be classified as "Tier I FHCs" (discussed in more detail below), which could, in turn, subject those same companies to oversight by the Federal Reserve Board. Finally, the ONI would be responsible for administration of the Treasury Department's existing responsibilities under TRIA, for representing the U.S. within the International Association of Insurance Supervisors (IAIS), and for entering into international agreements with respect to insurance matters as appropriate.
2. Federal Oversight of "Tier 1 FHCs" including Insurance Companies. Tier 1 FHCs are large financial institutions whose failure poses a systemic risk to the larger financial system. Under the Plan, if the ONI were to identify an insurance company or a holding company system that includes the insurance company, as a Tier 1 FHC, that company would be subject to Federal Reserve Board oversight including enhanced capital and liquidity requirements and risk management standards. Such oversight would be in addition to, rather than pre-empt or supplant state supervision. According to the Plan, these measures are designed to address "current gaps in insurance holding company regulation".
3. Enhanced Consumer Protection for Insurance Products and Practices. The Plan states that "[w]hile many states have enacted strong consumer protections in the insurance marketplace, protections vary widely among states. Any new insurance regulatory regime should enhance

19885 Detroit Road, Suite 244
Cleveland, OH 44116
P: (440) 666-9735
F: (440) 333-4810

consumer protections and address any gaps and problems that exist under the current system, including the regulation of producers of insurance.” The Plan does not specify precisely what enhanced consumer protections are necessary or whether enforcement should be at the federal or state level. With its implication of deeper federal regulation of the business of insurance, this is so far one of the most controversial of the Plan’s proposals with respect to insurance.

4. Increased National Uniformity. The Plan states that the current state-system of regulation is “highly fragmented, inconsistent, and inefficient”. The Plan states further that “[w]hile some steps have been taken to increase uniformity...there remain tremendous differences regulatory adequacy and consumer protection among the states.” The Plan mentions both the federal charter option and more effective state action but does not express a preference for one over the other, leaving the specifics to be hammered out through the legislative process.

Whether some or all of these proposals result in new federal regulation of the insurance industry remains to be seen. We will keep you apprised of developments as they occur.

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Cleveland, OH 44116
P: (440) 666-9735
F: (440) 333-4810

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