

Financial Industry Faces Post-Election Challenges

Law360, New York (November 30, 2012, 12:33 PM ET) -- The re-election of President Obama and a slight increase in Democratic control in the United States Senate presents several challenges for the financial services industry. Foremost on President Obama's and congressional Democrats' financial services agenda will be the protection of Dodd-Frank from attacks by industry and its Republican allies. Also, an administration priority will be ramping up by the financial regulatory agencies on a broad range of regulatory projects mandated by Dodd-Frank.

A key focus of the Obama administration and congressional Democrats will be the preservation and advancement of the Consumer Financial Protection Bureau (CFPB). There is some possibility of a technical corrections act to amend those provisions of Dodd-Frank that aren't working as intended, but any legislation which passes is unlikely to go beyond technical issues. Likewise, the split congressional balance of power makes it impossible for Republicans to push any strong changes in the Patient Protection and Affordable Care Act (PPACA).

One new pressing issue is legislative action on flood insurance. Although Congress reauthorized the federal flood insurance in June, Hurricane Sandy claims are expected to exceed the National Flood Insurance Program (NFIP) borrowing authority by at least \$4 billion. It remains to be seen whether this problem will be solved simply, or the Congress will add other provisions to this "must-pass" legislation.

Obama Administration

Key personnel changes are anticipated, including the expected departure of Treasury Secretary Timothy Geithner. Jack Lew, the White House chief of staff, is a front-runner for this key economic policy position. Other contenders include Erskine Bowles, former Small Business Association head and chief of staff to President Clinton (and co-chairman of the Simpson-Bowles budget study group), and Wall Street veteran Roger Altman, a deputy treasury secretary under President Clinton. Key White House economic positions may change as well.

Other pressing financial industry issues include housing reform, beginning with what to do with FNMA and FHLMC (Fannie and Freddie). Congress and the administration have effectively ignored housing program issues for the past four years, but pressure is building to pass legislation in this area. Much needed reform on the role of government sponsored enterprises regarding housing can only happen if a bipartisan agreement is reached.

Of direct interest to the insurance industry is the report due from the Federal Insurance Office (FIO), established by Dodd-Frank within the Treasury Department. Originally due in January 2012, the FIO report is expected to consider systemic risk regulation of insurance, capital standards, consumer protection issues, and capital and regulatory differences among states. The report also is expected to discuss international coordination of insurance regulation. FIO Director Michael McRaith has a leading role in international insurance regulation by being named chairman of an international regulator technical committee. Once FIO releases this report, Congress is expected to hold hearings on many of the issues it raises, followed by possible legislation.

Congress

House of Representatives

Republicans will continue to control the House of Representatives, and the Senate will remain in Democratic hands. The House Financial Services Committee will have new leadership. Current Chairman Spencer Bachus, R-Ala., is term limited and must relinquish the chairmanship next Congress, and ranking Democratic member Barney Frank, D-Mass., is retiring. The new chairman is expected to be Congressman Jeb Hensarling, R-Texas, the current vice chairman of the committee who also serves in the House Republican leadership. Congresswoman Maxine Waters, D-Calif., is expected to be the new ranking minority member on the committee. Waters was recently cleared of long-standing ethics charges, clearing the way for her to assume the position as the ranking member.

There will be significant turnover on this House Committee with several members having retired and others defeated in their races. A particular disappointment to the insurance industry is the defeat of House Insurance, Housing and Community Opportunity Subcommittee Chairman Judy Biggert, R-Ill. Biggert has been an effective and pragmatic member and subcommittee chairwoman. Other subcommittee chairpersons also will likely reshuffle given this change of leadership.

As Chairman, Hensarling is expected to hold hearings on alternative resolution ideas to draw a contrast with the Orderly Liquidation Authority enacted as part of Dodd-Frank. A former staff member to Sen. Phil Gramm, Hensarling is knowledgeable on financial services and insurance issues, and generally is skeptical toward federal regulation. The committee also is expected to consider proposals from both parties on the reform of FNMA and FHLMC. Congressman Hensarling has introduced his own FNMA/FHLMC "privatization" legislation, and Congresswoman Waters has strong views on these issues as well. Reform legislation will pass only if a bipartisan agreement is reached that includes support from the Obama administration.

Senate

In the Senate Banking Committee, Sen. Tim Johnson, D-S.D., will continue as chairman, but Sen. Richard Shelby will rotate off as the ranking Republican due to conference term limit rules. He is expected to be replaced by Sen. Mike Crapo, R-Idaho. In addition, due to the retirement of Sen. Daniel Akaka, D-Hawaii, and Sen. Herb Kohl, D-Wis., and the likely loss of other senators desiring to change committee assignments, it is likely that at least some new Democrats will be added to the committee, including possibly Senator-elect Elizabeth Warren, D-Mass., who championed the CFPB in the Dodd-Frank legislation and led its initial organizational efforts in the Obama administration before returning to Massachusetts to run for the Senate.

With Democratic control of the Senate continuing, the first priority will be to protect Dodd-Frank from major modifications. The committee also will have the lead on administration nominations requiring Senate confirmation, including the new Treasury secretary and other senior Treasury officials as they are nominated to fill vacant positions.

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