Financial Services Reform Bill and the Insurance Industry

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On July 15, 2010, the United States. Senate passed the Restoring American Financial Stability Act of 2010. The bill now goes to President Obama for his signature, which is expected in the coming days.

The bill, which is over 1,600 pages, establishes new regulations designed to prevent the repeat of the recent financial crisis and end the prospect of future government bailouts. Oversight is established through the creation of the Financial Stability Oversight Council ("Council").

Members of the Council consist of the heads of several Federal financial regulatory agencies and departments (including the Treasury Secretary who is to act as the Chairman of the Council) and an independent member having insurance expertise who will be appointed by the President subject to Senate confirmation.

Article V of the bill covers insurance and creates within the Treasury Department a new Office of National Insurance ("Office"). The Office will monitor the insurance industry, coordinate international insurance issues, and provide a study with recommendations to Congress on ways to modernize insurance regulation.

Various duties that the Office will oversee include:

1. Monitoring all aspects of the insurance industry and identifying issues or gaps in the regulation of insurers that could contribute to a systemic crisis in the insurance industry or U.S. financial system.
2. Identifying entities that could become subject to regulation by the Council.
3. Coordinating federal efforts on prudent aspects of international insurance matters.
4. Consulting with state regulators on insurance matters of national and international importance.
5. Advising the Secretary of Treasury on major domestic and international insurance policy issues.
6. Providing ability to collect financial information from certain insurers (smaller insurers may be exempt).

Robert W. Hogeboom, Senior Regulatory Attorney with Barger & Wolen, along with several insurance executive members of the Pacific Association of Domestic Insurance Companies (PADIC) were escorted by staff of the National Association of Mutual Insurance Companies (NAMIC) in late June to meet with key legislators from the California House of Representatives and U.S. Senate in Washington D.C. to discuss the legislation and its effect on California insurers.

Most important to the insurance industry is the fact that within 18 months the Office must conduct a study and issue a report to Congress providing recommendations on how to modernize and improve the system of insurance regulation in the United States.

The Office is to look at, among other matters:

- systemic risk regulation;
- capital standards-liquidity;
- consumer protection;
- the degree of national uniformity of state insurance regulations;
- regulation of insurance companies and affiliates on a consolidated basis;
- international coordination of insurance regulation;
- costs and benefits of federal regulation across all lines except health; and
- the feasibility of regulating only certain lines.

The report is also to examine, among other matters, the ability of any potential Federal regulation or regulator to provide "robust" consumer protection for policyholders.

The bill also includes reformation of surplus lines insurance and establishes the Nonadmitted and Reinsurance Reform Act of 2010, which is to take effect in 12 months.

This act generally provides that the placement of nonadmitted insurance will be subject to the statutory and regulatory requirements solely of the insured's home state. It also creates uniform standards for eligibility of nonadmitted insurers in states and provides for nationwide uniform requirements with respect to the reporting, payment, collection and allocation of premium taxes for nonadmitted insurance.

Additionally, it creates a U.S. list of approved alien insurers with which surplus line brokers may place insurance. This list is to be maintained by the NAIC.

Meeting with Legislators

Our group met with the following California legislators: Senators Feinstein and Boxer, and Representatives Baca, Campbell, Farr, McCarthy, Miller, Pelosi, Royce, Sanchez, Cardoza, Garamendi, Lofgren, Speier and Woolsey.

From the meetings, there were some consensus and conclusions that could be drawn:

1. The purpose of the Office is to have someone with insurance expertise within the federal system that will serve in an advisory position on insurance in order to avoid a systemic crisis in the industry.

2. The eighteen-month study period is to determine how much regulation is needed and in what areas. The consensus was that more legislation would be needed in the event that the Office recommends some federal insurance control.

3. Many legislators were in favor of a federal optional charter in order to ease the state barriers of competition and expand consumer choices for insurance beyond state lines. Large commercial carriers and life insurers have been pursuing the federal optional charter. A federal charter which would be in lieu of, and not in conjunction with, state enforcement was favored.

Industry efforts were successful in keeping insurance out of the main part of the bill. Efforts by NAMIC and others were successful in showing legislators that the insurance industry does not have systemic risk issues due to adequate state regulation of insurer financial issues.

Finally, it was shown that consumers do not need more protection for insurance products. Insurers would like the Office to be able to advise the Treasury on insurance issues without having direct regulation of the insurance industry.

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For more information on the Federal Insurance Office click here.