Congress Moves Forward on Ambitious Financial Services Agenda

*By Alec D. Rogers**

On the heels of the 107th Congress, which enacted the most sweeping securities law reforms since the 1930s and created a new federal program to bolster the commercial property insurance market, the 108th Congress could have been forgiven if it had chosen to focus its energies on other topics in its first few months. Instead, led by energetic House Financial Services Committee and subcommittee Chairmen, it has continued to pursue an ambitious agenda for further changes to the nation's financial services system. This article will survey the most significant financial services topics before Congress this session.

Deposit Insurance Reform

Although the current deposit insurance system is generally thought to be sound, there is general agreement that the time is ripe for undertaking several related reforms, many of which are fairly noncontroversial. These include merging the Bank Insurance Fund with the Savings Association Insurance Fund. There is also general consensus for reforming the methods by which premiums are charged to insured institutions, and giving the Federal Deposit Insurance Corporation more flexibility generally.

Completion of this task continues to be held up by the debate over whether Congress ought to increase the amount of insurance coverage (either by raising it outright, indexing it for inflation, or both) or whether it should remain at the current $100,000 limit. The Bush administration, the Federal Reserve and the Comptroller of the Currency are opposed to any increase in the coverage limits, while the Federal Deposit Insurance Corporation supports indexing it to inflation. Some in the community banking industry wish to first increase it and then index it to inflation. This more controversial proposal has been tied to the other, less controversial ones mentioned above.

On April 2, 2003, the House passed reform legislation along the above lines, with an increase in coverage to $130,000 per account and provision for future increases tied to the rate of inflation by a vote of 411-11. In contrast, the Senate Banking Committee has held a hearing, but has not taken any legislative action on deposit insurance reform in the 108th Congress.

Financial Institution Regulatory Relief

Both the House Financial Services Committee and the House Judiciary Committee have considered and reported legislation that would remove regulatory barriers on financial institution activity, H.R. 1375. The bill addresses a variety of regulatory barriers that remain in such areas as interstate banking, the cross marketing restrictions on the merchant banking operations of financial holding companies, and reducing the post approval time for bank acquisitions and mergers. It also reduces what the Federal Reserve characterizes as unnecessary reports. The House may take H.R. 1375 up this fall. No similar legislation has been introduced, however, in the Senate. As a result, it will be difficult to make more progress in this area during the 108th Congress.

Fair Credit Reporting Act

The Federal Fair Credit Reporting Act (FCRA), originally enacted in 1970, governs the conduct of credit reporting agencies and the rights of consumers to view and challenge mistakes on their credit reports. Federal Trade Commission Chairman Timothy Muris and others have credited it with fostering the growth of the modern credit system. Given the import of credit to consumer purchasing, and that of consumer purchasing to economic growth, "well functioning credit markets are an essential component of economic prosperity," Muris testified before the Senate Banking Committee.

Key components of this act are expiring this year, prompting Congress to act on their reauthorization. Like many reauthorizations, this affords Congress a chance to review the Act's operations and ponder the need for legislative changes. Accordingly, this act has been the subject of eight congressional hearings, and over a dozen separate bills.

On June 30, 2003, the Bush Administration released its own proposal for amending the FCRA, including its support for permanently reauthorizing the act's preemption of state regulation in certain matters, which is strongly supported by many financial institutions. Such items as the prescreening of consumer reports, the length of time in which credit rating agencies must investigate consumer disputes, the duties of credit information furnishers, and the age of information allowed to be used in credit reports are set by federal law to the exclusion of state regulation. This particular issue, whether states should have the ability to create tougher consumer protections than afforded under federal law, has been the focus of much of the discussion over FCRA reauthorization.

To compensate for preempting state action, the administration proposes to enhance consumer protections at the federal level. Consumers would be given free annual access to their credit reports to check for errors, be provided with clearer explanations of their credit scores and the rationale for them, and have enhanced ease in "opting out" of information sharing. The administration's proposal also contains measures to help consumers fight identity theft. These include a "one call" system that would mandate that credit reporting bureaus report identity theft issues to other bureaus and remove disputed charges where a police report had been filed.

The House Committee on Financial Services voted overwhelmingly to report H.R. 2622, which would make those expiring provisions of the Fair Credit Reporting Act permanent. It also increases protections against identity theft and consumer access to credit information. The House is likely to bring the bill up for consideration in the fall. The Senate has yet to act on similar legislation. The September 30, 2003 expiration date for key FCRA provisions makes likely the compromises that will be necessary for quick passage.

Check Truncation

Each year, the U.S. banking system processes the cashing and clearing of 50 million paper checks. Paper checks are physically transported from the presenting bank to the payor bank, and returned if the account upon which the check was drawn lacks sufficient funds. This system of physically moving so much paper imposes significant transaction costs on the financial system that are ultimately born by its customers. Although banks employ greater use of technology in this process, current law requires that physical checks still be sent to the payor bank unless an institution has agreed to handle the payments electronically. Obtaining consent to electronic processing by all of the institutions in the system is a long and slow process, and has proven to be a significant obstacle to moving towards an all-electronic system.

The House and Senate have each passed their versions of legislation that would end the practice of physically routing checks from the institution where they were cashed back to the original drawer. Instead, electronic versions would be sent. Institutions would have the opportunity to "opt out" and request paper versions instead, but rather than being the actual checks, they would simply be provided with paper summaries containing the pertinent information.

The measure is strongly supported by the Federal Reserve, which provided model legislation for such a system. In its transmittal letter accompanying the draft legislation, Chairman Alan Greenspan stated "The proposed legislation should improve the efficiency of the payments system by enabling banks to expand the use of electronics in the collection and return of checks." If a fully electronic checking system been in place on September 11, 2001, when terrorists struck the World Trade Center and the Pentagon, banks would have been able to avoid the disruption that occurred in the nation's checking system, according to Greenspan.

This legislation has broad, bi-partisan support in Congress. The House passed H.R. 1474 by a vote of 405-0, and the Senate passed its version, S. 1334, by unanimous consent. Differences in the two bills still need to be reconciled by a conference committee comprised of members from both chambers, and the bills passed in identical form before they can be sent to the White House for the President's signature. The Bush Administration supports the measures. Although there does not seem to be any particular urgency, the reduced costs, increased systemic security and relatively little opposition make chances for passage good during the 108th Congress.

Conclusions

Of the legislation mentioned, the check truncation and Fair Credit Reporting Act reauthorization measures described above have the best chance of achieving passage in the 108th Congress. Deposit insurance reform may continue to be held up over the question of increasing the coverage amounts. Finally, while the House has shown some interest in reducing regulatory barriers to financial services, the Senate has not shown any to date. Other financial issues, such as the oversight and regulation of Government Sponsored Enterprises after recent allegations of fraud at Freddie Mac, may occupy Congress's attention this fall, and reduce the chances for action in areas where the need for reform may appear less pressing.

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