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112th Congress

# Banking on Front Burner of Next Congress as Dodd-Frank Meets Reality

BY WILLIAM DONOVAN

One thing is certain: the Dodd-Frank reforms enacted toward the end of the 111th Congress will be implemented under the oversight of a very different 112th Congress. From critical appointments to technical changes in legislation, the election is bound to have an big impact on the future of financial services.

Veteran legislative analyst William Donovan examines key changes expected to the composition of the banking committees and the political appointments that need to be made to staff the regulatory agencies. He notes that lawmakers must still deal with Fannie Mae/Freddie Mac. Among options on the table for the large housing finance firms now under conservatorship include privatization, nationalization, and dismantling. The stakes will be high with the nation's mortgage finance system hanging in the balance.

When the 112th Congress convenes in January, banking issues—broadly defined—will remain front-burner issues. As the new Congress organizes you can be sure of one thing: The Senate Banking Committee will look very different then than it does today, with at least five (and possibly more) members of the 23-member committee not returning for the new Congress.

Chairman Christopher Dodd (D-Conn.) and committee members Evan Bayh (D-Ind.), Jim Bunning (R-Ky.) and Judd Gregg (R-N.H.) are retiring, and Sen. Robert Bennett (R-Utah) was defeated in his primary bid for re-election. With Chairman Dodd retiring, the gavel of the Banking Committee will pass to a new chairman; if as many expect, the Democrats retain a razor-thin majority in the Senate, the heir-apparent to the chairmanship is South Dakota's senior senator, Tim Johnson.

Should the Republicans eke out enough wins to give them the majority, the former committee chairman, Richard Shelby of Alabama (who previously served as chairman from 2003 to 2007) would be in line to take the helm. However, his seniority in the Senate may give Shelby other chairmanship options to choose from, clearing the path to the Banking Committee chairmanship for Sen. Mike Crapo (R-Idaho). Whether Dodd passes the gavel to a Democratic colleague, his Republican predecessor as Chairman, or to another Republican senator, in the 112th Congress, the Banking Com-

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mittee gavel will be held and the Committee agenda will be set by someone with a more business oriented, hands-off philosophy than was the case these past four years.

Less clear is whether the leadership of the House Financial Services Committee will change come January. Should the Democrats retain control of the House, look for current Chairman Barney Frank (D-Mass.) to retain leadership. However, if the Republicans take control, Alabama Republican Spencer Bachus is expected to assume the chairmanship of the Committee.

**Tough Go for Confirming CFPB Head.** The new Senate make-up could also play a role in determining who fills vacancies at several key financial services regulatory agencies, including the Federal Reserve, Comptroller of the Currency, National Credit Union Association, and especially the position of Director of the new Consumer Financial Protection Bureau. While Chairman Dodd was skeptical of his ability to muster the votes to approve the person most frequently mentioned to fill the post, Harvard professor Elizabeth Warren, that question has been put off for now. Warren, at least through mid-2011, will serve as a special adviser to the president and the Treasury secretary and will plan the launch of the new bureau, but she does not appear to be a candidate to head the bureau officially. That could still change, however.

With the Democrats' advantage expected to be reduced from the current nine-seat cushion, if not eliminated entirely, prospects for winning Senate confirmation for any candidate will be more complicated. So, it is possible that the Administration could follow a route other than seeking the ''advice and consent'' of the Senate to fill the position.

## Many Issues Crowd Agenda

Regardless of who chairs the Senate Banking and the House Financial Services Committees, count on the following issues to be the subject of hearings and legislative action:

**1. Revisions to Dodd-Frank Act.** Even before House and Senate conferees had completed work on the conference agreement on what has been described as the single most sweeping piece of financial reform legislation since the Great Depression, the Dodd-Frank Wall Street Reform and Consumer Protection Act, House Financial Services Committee Chairman Frank noted the need for a ''technical corrections'' bill to follow—conceding that some of the corrections might be more ''technical'' than others. Precisely how sweeping the reforms of the Dodd-Frank Act will be remains to be seen; the answer to that question will be determined in large measure by the magnitude of Republican pick-ups in the House and the Senate, and whether one or both chambers flips from Democratic to Republican control.

Having passed the House by a vote of 237 to 192—with only three Republicans voting in favor of the bill—a Republican majority in the House will trigger a far more critical review of the Dodd-Frank Act than if the Democrats retain control of the House.

In a similar vein, review of the Dodd-Frank Act is also inevitable in the Senate. As the once and perhaps future Chairman of the Senate Committee, Sen. Shelby, has said: ''The Dodd-Frank bill . . . is so sweeping and such a game changer in so many ways that it's incumbent on us to revisit it, to look at it closely.''

**2. Dodd-Frank Act Studies.** By any standard the Dodd-Frank Act is a sweeping piece of legislation which, according to the Congressional Research Service, will spawn at least 240 new regulations. Not only that, but it also mandates that 67 one-time studies or reports and 22 periodic or recurring studies or reports be submitted to Congress.

Plan on seeing the regulators appearing repeatedly before the Senate Banking and House Financial Services Committees to deliver these studies and reports, to present their findings and recommendations, and to be grilled by skeptical members of both Committees.

**3. Fannie Mae, Freddie Mac, Federal Home Loan Banks.** A major building block toward financial recovery not addressed in the Dodd-Frank Act was the government sponsored enterprises. What to do with Fannie Mae, Freddie Mac and the Federal Home Loan Banks will be at the top of the agenda of both congressional committees when the 112th Congress is sworn in next January.

Privatization, nationalization, dismantling and all other conceivable options will be on the table, and the stakes will be high with the nation's mortgage finance system hanging in the balance.

**4. FHA Reform.** During the nation's mortgage meltdown the Federal Housing Administration was catapulted into the position of being the single largest insurer of residential mortgage loans in the country. The strength and sustainability of the FHA programs will be the subject of extensive hearings, and legislation very possibly redefining its mission will be offered and considered in the next Congress.

**5. National Flood Insurance Program.** Unable to enact a long-term extension of the National Flood Insurance Program, the 111th Congress merely authorized a short-term extension of the program to carry it into the new Congress, guaranteeing that flood insurance issues will be on the table when the new Congress convenes in January.

**6. Reassessing Community Reinvestment Act.** The last day Congress was in session before recessing for the election, the Chairman of the House Financial Services Committee's Subcommittee on Financial Institutions and Consumer Credit, Rep. Luis Gutierrez (D-Ill.), along with three of his colleagues, introduced the ''American Community Investment Reform Act of 2010'' (H.R. 6334).

If enacted into law as introduced, Rep. Gutierrez's bill would result in a substantial expansion of the reach of CRA. However, if the Republicans take control of the House any review of CRA would more likely be with an eye toward limiting or even eliminating its reach.

## Next Congress Will Define Predecessor

Forecasting the future is always a challenge; forecasting the future in the current political environment with the elections virtually upon us is all the more challenging. But look for new leadership of the Senate Banking, if not the House Financial Services Committee; a major focus on GSE reform; a revisiting of selected elements of the *Dodd-Frank Act*; a close monitoring of the CFPB

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and the implementation of *Dodd-Frank Act*; and, scores of oversight hearings on studies and reports mandated by the new law.