

# Obama Signs H.R. 4173

BY ARTHUR D. POSTAL

**W**ASHINGTON BUREAU — When President Obama signed H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act bill, into law at 11:49 a.m. today, he created an avalanche of new work for the executive branch.

The U.S. Chamber of Commerce, Washington, says the Dodd-Frank act will require federal agencies to develop 520 rules, conduct 81 studies and issue 93 reports.

The U.S. Treasury Department will have to create a Federal Insurance Office (FIO), and the Federal Reserve Bureau will have to create a Consumer Financial Protection Bureau, which will have an Office of Financial Protection for Older Americans and an Office of Financial Literacy. The topics the financial literacy office will address will include retirement planning. Other sections of the act will revamp bank and hedge fund regulation and create a Financial Stability Oversight Council.

Frank Keating, president of the American Council of Life Insurers, Washington, says the signing of the Dodd-Frank bill shifts the focus of financial reform efforts to the federal regulatory agencies.

"The nation must rely on the expertise and professionalism of the agencies to implement H.R. 4173 in a way that honors its underlying spirit of reform, but does not hamper well-functioning markets and the services we provide our policy owners through inappropriate or excessive regulation," Keating says.

The ACLI will be working to make sure regulators and others understand that the life insurance industry "differs markedly from banking and securities," Keating says.

"While the federal government has long monitored discrete aspects of insurance, we hope the new FIO will provide policymakers with expert advice on the full spectrum of industry much as federal banking and securities regulators do for their industries," Keating says. "We look forward to initiating a dialogue with the FIO as soon as it is up-and-running."

## THE BATTLE FOR THE BILL

Rep. Barney Frank, D-Mass., chairman of the House Financial Services Committee oversaw drafting H.R. 4173 in the House, where Democrats have a strong majority and lawmakers can pass a bill with a simple majority vote.

Sen. Christopher Dodd, D-Conn., chairman of the Senate Banking, Housing and Urban Affairs Committee, oversaw the delicate task of getting the bill through the Senate, where Democrats have only 59 of the 60 votes needed to guarantee that a bill can get to the floor.

One Democrat – Russell Feingold of Wisconsin – ended up voting against the bill, but Dodd and others eventually cajoled three New England Republicans – Susan Collins and Olympia Snowe of Maine, and Scott Brown of Massachusetts – into getting the bill over the 60-vote hump July 15.

"For the last year, Chairmen Barney Frank and Chris Dodd have worked day and night to bring about reform," Obama said at the bill signing ceremony. "I'm profoundly grateful to them. I also want to express my appreciation to Senator Harry Reid and Speaker Nancy Pelosi for their leadership. Passing this bill was no easy task. To get there, we had to overcome the furious lobbying of an array of powerful interest groups, and a partisan minority determined to block change."

At one point, Obama clapped Dodd on the shoulder and pointed to him, as if to say, "Look at him; he made it all happen."

Obama made no direct references to the sections of H.R. 4173 that will affect the insurance industry, but he mentioned American International Group Inc., New York (NYSE:AIG).

"For years, our financial sector was governed by antiquated and poorly enforced rules that allowed some to game the system and take risks that endangered the entire economy," Obama said. "Firms like AIG placed massive, risky bets with borrowed money. And while the rules left abuse and excess unchecked, they left taxpayers on the hook if a big bank or financial institution ever failed."

Now that the bill is law, "there will be no more taxpayer-funded bailouts," Obama said. "Period. If a large financial institution should ever fail, this reform gives us the ability to wind it down without endangering the broader economy. And there will be new rules to make clear that no firm is somehow protected because it is 'too big to fail,' so that we don't have another AIG."

## INDUSTRY REACTIONS: BETTER LIKE READING REGULATION DRAFTS

Tom Currey, president of the **National Association of Insurance and Financial Advisors**, says the Dodd-Frank act "time frames and amount of input required will challenge the entire financial services community and the SEC."

"NAIFA will engage on the most important issues that will impact our members," Currey says. "We will do our part to assure that our members' real world, Main Street perspectives and experiences are heard as regulators

consider how to address the various issues in the Dodd-Frank [act].”

Robert DeFillipo, a spokesman for **Prudential Financial Inc.**, Newark, N.J. (NYSE:PRU), says, “Prudential commends Congress and the administration for the work it took to develop the financial reform legislation.”

But Prudential plans to carefully consider the new regulatory measures and rulemaking process before commenting on the act in detail, DeFillipo says.

**MetLife Inc.**, New York (NYSE:MET), says lawmakers addressed some of insurers’ concerns about the possible effects of earlier versions of the Volcker Rule restrictions on proprietary trading, new derivatives trading rules, and Federal Insurance Office provisions on insurers.

But it is not clear how all of the new regulations and studies will affect MetLife, insurers as a group, and policyholders, MetLife spokesman John Calagna says.

“We remain committed to staying actively involved in discussions with regulators to help avoid any unintended, adverse impact on the life insurance industry and the many policyholders it protects,” Calagna says.

Ken Cohen, deputy general counsel at **Massachusetts Mutual Life Insurance Company**, Springfield, Mass., says MassMutual supports the bill.

“We praise the efforts of key members of Congress who worked hard to help ensure this bill struck the right balance of protecting consumers, fostering efficient and competitive markets, and enabling companies like us to best serve our customers,” Cohen says. “There is no question that in the wake of the 2008 economic meltdown, financial reforms were necessary.”

H.R. 4173 is unprecedented in complexity and scope, Cohen says.

“Rep. Frank worked tirelessly on behalf of this legislation, as did his Senate counterpart, Chris Dodd of Connecticut,” Cohen says. “Our home state senators, John Kerry and Scott Brown, also worked significantly on this bill. In particular, Senator Brown showed courage in supporting the final version of the bill – one of only three Senate Republicans to do so.”

#### **CLIENT RELATIONSHIP PROVISIONS**

For life insurance agents and brokers, one act component of interest is Section 913, a section that requires the U.S. Securities and Exchange Commission to study the standard of care that sellers of securities should follow, then develop a standard-of-care regulation.

The SEC now requires investment advisors who provide personalized financial advice to use a fiduciary standard of care, meaning that they must put clients’ interests ahead of their own.

Securities brokers and most insurance producers use a suitability standard, meaning that they must verify that the products they sell to consumers suit the consumers’ needs.

**Eric Arnold**, a partner at Sutherland, Asbill & Brennan L.L.P., Washington, says the SEC “has no other choice but to move quickly” to conduct a study addressing the standard-of-care issue:

“They have not only to ask for public comment but get public comment, analyze the input, draft the study, then study it at the senior level,” Arnold says. “That is a lot of work for them.”

The SEC regulates variable annuities and variable life products as securities, and the SEC probably will tighten standard-of-care rules for sellers of those products, Arnold says.

“If you are an insurance agent and you are selling a variable product, this new policy is going to apply to you,” Arnold says. “That will be the direct impact. What will be interesting is the secondary wave. Will this put pressure on state regulators to raise their standard of care under state statutes?”

Another Dodd-Frank act provision calls for the U.S. Government Accountability Office to determine if “financial planning should be regulated by a new self regulatory organization [SRO] housed within the Securities and Exchange Commission.”

Currey says NAIFA will recommend that no new financial planner regulatory entity be created.

Creating a new financial planner regulatory entity would impose duplicate regulations on many of NAIFA’s already heavily regulated members, Currey says.

One version of the provision was simply going to require the government to form the planner regulatory entity; NAIFA helped lobby to get the provision changed to a study provision.

“NAIFA strongly believes the best way to address the issue of individuals who use misleading marketing practices is to use a similar model to the [National Association of Insurance Commissioners] and [North American Securities Administrators Association] model rules on senior specific designations,” Currey says. “Both model regulations have been endorsed in the Dodd-Frank [act], which creates federal grant incentives for the states to adopt the model regulations.” ■

*Allison Bell contributed information to this report.*