# Obama Administration, not new Congress, to alter insurance in 2011

By Bob Graham
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The Obama Administration, not Congress, could dramatically affect insurance and its regulation in 2011, according to a panel of industry expert.

"The real action now and for most of 2011 will be in the executive branch," Robert Detlefsen, vice president of public policy for the National Association of Mutual Insurance Cos. said at a Cato Institute panel discussion.

Although the panel was convened to predict the effects the new Congress, including a Republican-led House of Representatives taking office in January, might have on the banking and insurance sectors, participants' comments dealt mostly with how the Obama Administration's implementation of bills passed this year could change the insurance landscape.

"It really doesn't involve Congress much, at least not at this stage," Detlefsen said.

The most important new law affecting the industry is the Dodd-Frank Wall Street Reform and Consumer Protection Act. Since its passage in July 2010, the financial services reform law, a response to the financial crisis of 2008, has moved into the implementation phase, meaning the Obama administration has been busy interpreting the language.

**Dodd-Frank repeal unlikely**

Calls for a full repeal or significant change to the Dodd-Frank law will fail, predicted the panel, which included Lars Powell, an insurance and financial services professor at the University of Arkansas, and Lawrence H. Mirel, a former Washington, D.C., insurance commissioner.

The key part of Dodd-Frank affecting insurance is the creation of a Federal Office of Insurance.

Powell noted that the FOI, which falls far short of calls by some in Congress for a complete federalization of insurance, still targets a "highly competitive and highly regulated [industry] at the state level."

**No federalization of insurance**

Mirel, now partner at the Wiley Rein law firm, said the federal government appears unlikely to want to take on the regulation of insurance.

“There is less change to insurance in Dodd-Frank than meets the eye,” Mirel said.

The Dodd-Frank law clearly indicates, according to Mirel, that state regulation prevails over federal regulation.

The Dodd-Frank provision creating the FIO makes it a “toothless tiger,” because the FIO will be headed by a civil service. No director, staff or budget has been prepared for the FIO, even though it has a year until it must produce a report explaining how insurance reform may occur, Mirel said.

Even if it does present a report to Congress with recommendations, Mirel said, Congress seems unwilling to act.

**Leaving regulation for others**

“Congress basically kicked the regulation of insurance down the road,” Mirel said.

The effect of the FIO may be financial. Because the FIO must prepare a report for Congress, it will require insurers to file additional paperwork. Saddled with those costs, insurers will pass them to consumers in higher rates, Powell warned.

Mirel said the FIO’s ability to regulate non-admitted insurance companies, forcing states to adhere to regulation in the insurer’s home state, could “begin to shift the way the federal government interacts with states on insurance.” But because the FIO report comes before the next presidential election, its effects could be minor.

The FIO’s regulation of non-admitted carriers will lead to single-state reporting and regulation, which is a “very positive thing,” stimulating competition, said Stephen Pociask, chief economist at the American Consumer Institute.

**Battling the poison**

The public’s perception of insurance after the “poisonous” treatment of the insurance industry during the Democrats efforts to pass health care reform over the last two years could tarnish other lines, Detlefsen said.

“There was an enormous amount of misinformation and misconceptions about the nature of how insurance works,” Detletsen said. “That could have a spill-over effect for how people understand the property-casualty industry.”

But Congress appears unwilling to address important insurance issues, including a backstop for terrorism insurance and a long-term extension of the National Flood Insurance Program, used by more than 5 million homeowners to protect against serious flood damage.

Mirel said Congress must find a solution for catastrophic insurance, especially in the wake of Hurricane Katrina in 2006. “Unless Congress deals with this in the near future, we are going to be right back where we were after Katrina,” Mirel said.