ABA Analysis of the 2014 Elections

Midterm elections have historically been rather mundane and boring. The 2014 elections have been anything but. After countless television and radio spots, endless debates and campaign expenditures of nearly $3.7 billion, the control of the U.S. Senate is now in the hands of Republicans and, as expected, Republicans exceeded their margin of control in the U.S. House of Representatives.

Unlike 2010 and 2012, the banking industry was not on “the ballot” in 2014. However, bankers from around the country took a unique and intense interest in this year’s campaigns. As is the case with all informed Americans, bankers remain concerned with the difficult issues our country faces on the tax policy, health care and the budget deficit. More directly, bankers are concerned that four years after the passage of the Dodd-Frank Act, banks of all sizes are feeling the strain of regulation weighing the industry down and harming their ability to serve their customers. So while banking may not have been on the official ballots, bankers understood how important their participation in this year’s elections could help alter the future of the banking industry.

The results of this election could have a significant impact on the ability of our country to address issues before they grow beyond repair. On banking issues, many of the rules of the Dodd-Frank Act are in the final, pending or under-consideration stage. While these rules are largely under the control of the prudential banking regulators and the CFPB, Congress can play a critical role in this process, in terms of both legislation and aggressive oversight of regulatory actions. The U.S. Senate under current Democratic leadership has been reluctant to take on that role. We anticipate that the incoming leadership will be more active in their oversight responsibilities and will originate and consider some regulatory relief bills in the 114th Congress.

The final results in the U.S. Senate campaigns indicate that there is continuing strong partisanship, with a shrinking number of centrists in Congress. Although control has changed in the Senate, the failure of either party to obtain a sufficient majority (60 seats) in the Senate to move legislation could likely add up to the potential for continuing gridlock on major issues, including issues important to the banking industry. Senate leaders can use the upcoming session to build consensus on issues in the lead-up to the 2016 presidential elections—or they can use the power of leadership to aggressively alter some of the Administration’s efforts. We are hopeful that through effective leadership progress can be made to solve some of our nation’s pressing issues.

THE U.S. SENATE

The Republicans now hold a 52 to 45 edge (Alaska, Louisiana and Virginia are still undecided), and will control the committee chairmanships and be able to set agendas, but we cannot expect much else to get done without a broad consensus or at least some Democratic support. Democratic support could be difficult to find leading up to the 2016 presidential elections as Democrats will want to protect the Administration’s legacy and will also want to pursue “messaging” bills for their potential candidate. Meanwhile, Republicans will look to control the message by pursuing legislation that will put 2016 Senate Democrats on record on issues that could become part of their re-elect campaigns. The glimmer of hope for building consensus on some major issues may rest on the long-term relationship between Sen. Mitch McConnell (R-KY) and Vice President Joe Biden.

With Republicans in control, all Senate leadership and committee chairmen will change. At the very top, Sen. McConnell, currently the Republican Leader will take over as Majority Leader of the Senate from Sen. Harry Reid (D-NV). John Cornyn (R-TX) is expected to assume the position of Majority Whip. Sen. Reid, despite having loss his majority, has secured the votes for the position of Minority Leader.

The Senate Banking Committee will be headed by Sen. Richard Shelby (R-AL). Sen. Shelby is a familiar face on the Committee, having served as chairman of the panel from 2003-2007. With a two-year term (caucus rules only allow a chairman six years) and a narrow window of opportunity to advance legislation before the 2016 election cycle begins, it is uncertain how active Sen. Shelby will be in advancing legislation. We expect him to be very active in his oversight of DFA implementation, with particular focus on the CFPB. Sen. Shelby has in the past expressed concern over the onerous regulations that banks face and has presented legislation that would require a cost-benefit analysis be done before federal regulators put rules in effect.

The committee will also have a new lead Democrat. Sen. Sherrod Brown (D-OH) and Sen. Jack Reed (D-RI) are in line to assume the position. ABA expects Sen. Brown to be selected for that position.

The makeup and ratio of the Banking Committee will change due to the retirements, election night defeats and the change in control. Sens. Mike Johanns (R-NE) and Tom Coburn (R-OK), along with current Chairman Tim Johnson (D-SD) are retiring. Sen. Kay Hagan (D-NC) was defeated. Although there are elections still to be determined, the Republicans are expected to have at least a two-vote margin on the committee.

THE U.S. HOUSE OF REPRESENTATIVES

Prior to the election, there were 234 Republicans and 201 Democrats in the House. While there are still a few elections to be decided, it appears that the Republicans will have a gain of no less than 9 seats. Current results have the House makeup as 242 Republicans and 174 Democrats, with 19 races still too close to call. The GOP majority is enough to ensure that the Republicans will continue to control the process and pass legislation. Although Republicans have gained seats, if recent history is any indication, achieving consensus within their caucus will remain a challenge as caucuses within the caucus attempt to move in alternative directions. The need to compromise with the outgoing president and with a Senate that has a less-than-veto-proof margin will be important to watch in the upcoming Congress.

Although there have been rumblings about a challenger to Speaker John Boehner (R-OH), with an increase in the GOP majority, we expect Speaker Boehner and Majority Leader Kevin McCarthy (R-CA) will continue to lead the Republicans. Minority Leader Nancy Pelosi (D-CA) has not stated her intentions, but all indications are that she will remain in her post.

The current leadership of the House Financial Services Committee is expected to remain in place, although outgoing Agriculture Committee Chairman Frank Lucas (R-OK) has indicated that he will challenge Chairman Jeb Hensarling (R-TX). Subcommittee leadership will change with the departure of regulatory relief champion House Financial Institutions Subcommittee Chairman Shelley Moore Capito (R-WV), who successfully won a Senate seat. Most observers expect Rep. Blaine Leutkemeyer (R-MO), a former community banker and a champion of many regulatory relief bills, to pursue this important subcommittee assignment. This subcommittee assignment will be made by Hensarling in December. There will also be change on the full Committee as nine members will leave the committee because they retired, sought higher office or were defeated.

With one Congress under their belts, we have a good indication how Chairman Hensarling and Ranking Member Waters work together. Although Hensarling and Waters are about as far apart philosophically as any chair and ranking member of a congressional committee, the committee was successful in passing a handful of regulatory relief provisions through the committee and the full House. We expect the leaders to continue their differences on areas concerning the CFPB and other Dodd-Frank provisions. We also expect the committee to take up a fair number of regulatory relief provisions, many of which were considered in the current Congress, early in the next session to achieve some quick legislative wins.

Other key committees for bankers in the House, such as Ways and Means (tax writing) and Agriculture will also undergo leadership changes. Members vying for the chairmanship of the Ways and Means Committee include Rep. Paul Ryan (R-WI) and Rep. Kevin Brady (R-TX). Rep. Ryan is the leading contender for the position. In the Agriculture Committee, Rep. Michael Conaway (R-TX) is the leading candidate for the chairmanship.

LAME DUCK SESSION

Now that the Republicans have the majority in both the House and Senate, there is likely to be less done in the few remaining weeks of this Congress. The thinking is that House Republicans will want to wait until next Congress to strike a better deal on some of the outstanding issues. It is also believed that Leader Reid will be less inclined to help Republicans in the final days of the session. The only must pass legislation is an extension of the continuing resolution or an omnibus appropriations bill to keep the federal government operating beyond Dec. 11. In addition, an extension of the Terrorism Risk Insurance Act (TRIA) could be scheduled for possible consideration if consensus can be reached between House and Senate leaders. As for banking matters, there are at least ten regulatory reform bills that have passed the House with strong bipartisan votes. ABA will be advocating for the passage of these measures during the lame duck session.

KEY ISSUES FOR 114th CONGRESS

Dodd-Frank Reform

For the past four years, Republicans in the House have passed bills that work around the margins of Dodd-Frank, with full knowledge that the Senate would be unlikely to take up broad changes to the law. In fact, the Senate Banking Committee has been unable to move any legislation—including eight non-controversial bills that passed the House with overwhelming bipartisan support—through the Senate. Now, with a more like-minded Republican majority on the other side of the Capitol, expect Chairman Hensarling to be more aggressive in pushing for changes to Dodd-Frank and for the Senate to consider some of these measures. While wholesale changes are unlikely, there is a chance that some Dodd-Frank issues can pass both bodies with bipartisan support. These measures will have to compete for floor time with other must-pass measures and will have to be considered in the narrow window for legislative action in 2015.

CFPB

While there may be a push for the elimination of the CFPB, such a change is highly unlikely given the Administration's support for the bureau. Expect increased scrutiny in the Senate on the CFPB's proposals and a continued push to change the structure of the CFPB from a single director to a five-member board and a push to subject the CFPB to the congressional appropriations process.

Regulatory Burden

With the change in Senate leadership, there is reason for optimism that some regulatory reform can be enacted in the next Congress. Over the past two years, some Democrats took the position that no changes should be made to Dodd-Frank, arguing that it would open the flood gates to more reform measures. After four years of living with the Dodd-Frank Act, it has become clear to both Republicans and some Democrats that there are complications and unintended consequences associated with the law. The ABA pursued many changes to the Act this Congress and will continue to push aggressively for changes next Congress. As noted, given the administration's passion for this legislation, changes will not come easy. It will still be necessary to work with the minority parties in both the House and Senate to gain bipartisan support for these proposals.

Data Breach

Congress has not moved aggressively on data breach legislation. With an increasing number of breaches occurring primarily at retailers, several congressional committees are expected to focus additional attention to this issue in the coming Congress. ABA has advocated for legislation that raises all participants in the payments system to comparable levels of security. In addition, we support efforts that make those responsible for data breaches responsible for their costs. ABA will pursue legislation that calls for faster and more effective sharing of threat information by law enforcement agencies and expansion to the merchant community of the information-sharing already taking place in the financial industry.

GSE Reform

There is broad recognition that GSE reform is needed and that the current situation in which housing finance is totally dominated by government entities should be phased out. Based on the recent failed attempts by the House and Senate there is still no consensus on how to address the GSEs. GSE reform will remain a priority issue for Chairman Hensarling next Congress. It is uncertain how the Senate will address this issue as the champions for GSE reform—Sen. Johnson and Sen. Crapo—will no longer be serving in leadership roles on the Committee. Sen. Shelby voted against the Johnson/Crapo measure earlier this year that would have put in place a new agency that maintains a role for the government guaranteeing losses on certain mortgage backed securities. In addition, administration engagement on this issue may have waned after being unable to move a proposal this year.

Tax Reform

With new Chairmen of the House Ways and Means Committee and the Senate Finance Committee, there will be new ideas on tax reform. Although there is near-universal support for the need for tax reform, Congress has failed to take on this major issue. There will likely be discussion of broad tax reform in the next Congress, but its complexities, along with interest groups fighting to keep their specific provisions out of harm's ways and the continued debate on income inequality in this country, will make achieving major tax reform a long shot this Congress.