THE SURETY & FIDELITY ASSOCIATION OF AMERICA

MEMORANDUM

TO: Government Affairs Advisory Committee

FROM: Lenore S. Marema

DATE: August 8, 2007

RE: Overview of the 110th Congress at the Summer Recess—Fidelity

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Congress adjourned on August 6 for its summer recess. To date in the 110th Congress, there has been no final action on any issues impacting fidelity; but there are issues of interest pending in Congress. The following is a status report on SFAA's efforts regarding issues affecting fidelity. Congress reconvenes on September 4.

Fiscal 2008 Appropriations

The new Democratic leadership initially aimed to be the first Congress to complete the budget by July 4 and, later, to be the first Congress in a long time to complete the budget by the August recess. Now, as there is still much work to be done, appropriations will be one of the first things that Congress needs to address and complete when it reconvenes. The 2008 fiscal year begins on October 1; and, unless the budget gets done, continuing resolutions will be needed to avoid a shut down of the federal government.

The House passed all 12 of its appropriations bills; but at issue is a $23 billion spending gap between what the House appropriated and what President Bush requested, and that is with the Pentagon appropriations bill being $3.5 billion less than requested. The President has threatened vetoes of most of the bills. The House deliberately separated out spending for the war in Iraq and will take that up in September, as the Administration must give Congress a new report on conditions in Iraq on September 15.

By contrast, the Senate passed the fiscal 2008 Homeland Security bill on July 27 as the summer recess was approaching. This was the first appropriations bill to reach the Senate floor. It appears that the Senate is headed in the direction of the House, namely, passing bills that exceed the President's requests. The first item on the Senate's agenda when it returns is the Military Construction and Veteran's Affairs appropriations bill.

Conference committees likely will be needed to resolve differences in the House and Senate versions of some of the appropriations bills, and there will be some veto override votes. Both chambers are working to avoid a veto on many of the appropriations bills.

Earmarks have been in the spotlight this session. Early in the session, the House changed its rules to require earmarks to be disclosed. Both the House and Senate passed new legislation, introduced near the end of the session, which would require Senators to disclose earmarks they have sponsored and Committee chairs to certify that earmarks have been disclosed 48 hours before a vote in the Senate on the bill or conference report containing the earmark. Failure of a Senator to properly disclose earmarks will open up the bill or conference report to a point of order. For the first time, Senators will be able to move on the Floor to eliminate earmarks added in a conference report that were in neither the original House nor Senate bill.

Issues Pending in Congress that Impact Fidelity

H.B. 2389 would enact a new law to help small businesses develop, invest in and purchase energy efficient buildings, fixtures, equipment and technology. The bill would create the Renewable Fuel Capital Investment Program. The Administrator of the Program (Administrator) would be authorized to issue trust certificates representing ownership of all or a fractional part of debentures issued by a Renewable Fuel Capital Investment Company and guaranteed by the Administrator. Any agent that performs the duties of the Administrator would be required to obtain a fidelity bond or insurance in the amounts the Administrator determines necessary to fully protect the interests of the United States.

H.R. 3221 is an omnibus alternative energy bill, combining several bills as a result of negotiations in Congress to get a bill passed and to the President, which provides for alternative sources of energy production. The bill would require agents performing registration functions in a venture capital program that the bill would create to obtain a fidelity bond or an insurance policy. The program would be for investment companies receiving government funds for investing in renewable energy resources. The bill passed the House before the summer recess.

Issues in Congress Affecting the Insurance Industry

The natural catastrophe issue has dominated the insurance agenda in Congress. Some of the interest in Congress is backlash against the insurance industry, while some is industry-generated efforts to seriously address coverage for the enormous losses arising from natural disasters. The industry lobby in this session of Congress has been a series of tap dances. On one hand, most of the industry opposes any federal role in insuring natural disasters, yet one of the industry's primary goals is the revision and extension of the Terrorism Risk and Insurance Act (TRIA) before it expires again at year's end. Many in Congress do not grasp the distinction that the risk of terrorism is uninsurable so the private market will not respond, but there is a robust market for coverage resulting from natural disasters, particularly if the private market is allowed to operate without burdensome regulatory intervention. The industry thinks that Representative Gene Taylor's (D-MS) bill -- H.R. 990 -- to expand the National Flood Insurance Program (NFIP) to cover wind losses would substantially exacerbate the potential deficits in that Program. Yet, the bill is hard to oppose with the private markets adjusting in the Gulf Coast region and insurers responding by reducing their writing, limiting coverage and increasing deductibles. Although it is DOA in this session, the optional federal charter (OFC) has been introduced in the House and Senate. It contains provisions that would limit the industry's antitrust immunity for federally-chartered insurers but keep it intact for state regulated companies. This creates the misperception that the industry is willing to "give up" McCarran for the OFC while the industry is united in opposition to the bills in the House and Senate Judiciary Committees to repeal McCarran. Similarly, the industry supports federal regulation by the Treasury Department while opposing regulation by the Federal Trade Commission under the pending antitrust bills.

The natural catastrophe issue appeared to be headed to a National Study Commission in this Congress, as this was the only action on which consensus seemed possible in both the House and the Senate. The Senate Banking Committee marked up S. 292, which is legislation creating such a commission. On the final day of the session, however, Florida Representatives Ron Klein (D-FL) and Tim Mahoney (D-FL) introduced H.R. 3355, the Homeowners Defense Act of 2007. The bill would create a non-profit Natural Catastrophe Risk Consortium, which would be a federal-state pool to buy reinsurance and sell catastrophe bonds on behalf of the participating states. The bill also would create a federal loan program to provide bridge loans to states to provide liquidity and to help respond to a catastrophic event. In essence, the bill provides a mechanism for the states to pool their resources to obtain reinsurance for natural catastrophes or to sell catastrophe bonds to raise revenue to pay for losses. The Consortium would be a quasi-public corporation. House Financial Services Committee (HFSC) Chair Barney Frank (D-MA) has indicated that there will be hearings on this approach in early September.

The HFSC passed H.R. 2761, the Terrorism Risk Insurance Revision and Extension Act (TRIREA), before adjourning for the summer. It extends TRIA for 15 years with the current co-payments and deductibles. H.R. 2761 also makes some significant changes in coverage — expanding coverage to include domestic terrorism and covering risks from "weapons of mass destruction (nuclear, biological, chemical and radiological) — but also requires that such coverage must be "made available" and sets the program trigger at losses of $50 billion. An HFSC subcommittee previously conducted a seven-hour hearing on its mark up. The White House strongly opposed the bill and threatened a veto. A Senate bill will be introduced after the summer recess.

HFSC also marked up H.R. 3121, Representative Taylor's (D-MS) multi-peril coverage bill for the NFIP after defeating numerous amendments to derail it. The vote went down on a partisan basis.

The bills on the natural catastrophe commission, TRIA and the NFIP are expected to hit the floors of the House and Senate in late September or early October.

The activities and positions of the National Association of Insurance Commissioners (NAIC) remain puzzling on federal insurance issues. In testifying on H.R. 920, Rep. Taylor's multi-peril insurance bill to allow the National Flood Program (NFIP) to offer wind coverage, the NAIC did not oppose it. Instead, the NAIC suggested that the NFIP be structured more like a reinsurer so that issues regarding what caused the loss would be between the insurer and reinsurer, not the consumer. In the alternate, the private insurance market might offer an all-perils policy if there were a federal backstop or credit line that would cap and back the industry's losses. The NAIC also has wavered on opposition to repeal or amend McCarran-Ferguson.

Future Directions

When Congress returns in the fall, it has a full agenda; but what gets done depends on how many Congressional legislative days are consumed with the appropriation bills, which need to be finished before the October 1 start of the new fiscal year, and the debate on the supplemental spending bill for the war in Iraq. At this point, it looks like Congress will be in session well into December.