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If CFPB Needs A Commission, Why Not OCC?

By: Victoria Finkle – February 13, 2013

Sen. Mike Crapo's surprise suggestion that the Office of the Comptroller of the Currency should be restructured and headed by a commission - rather than a single director - has sparked a fierce debate among industry observers.

In a recent interview with American Banker, the Idaho Republican and GOP leader of the Senate Banking Committee unexpectedly voiced support for the OCC change while also promoting a similar switch to the structure of the Consumer Financial Protection Bureau.

"I really believe we should have the kind of operations like you see with the SEC, where they operate with a board," Crapo said. "First of all, it brings in additional points of view, but it also requires the collaboration from different perspectives that helps you get to the right solution, rather than just having one individual be able to dictate the entire activity."

Whether that is enough to give way to a concrete proposal for change at the OCC remains to be seen. The agency has operated under a single director since 1863, and there is no history of serious calls for changing the OCC's leadership structure.

Some analysts said Crapo's remarks made sense given how hard Republicans are pushing to change the CFPB's structure. (The GOP has declined to vote on a nominee to head the agency until several changes are made.)

"It's easier to claim that you're for a commission at the CFPB if you claim all the financial regulators should have a commission," said Edward Mills, a financial policy analyst at FBR Capital Markets and former Hill aide. "The more there is no exception, the more the CFPB stands out."

But Mills said the comments may also reflect dissatisfaction with the new regime at the OCC. Comptroller of the Currency Thomas Curry, who joined the agency last spring, has fought to distance the agency from the perception that it is too lenient on banks. If the agency gets tougher on the industry, that may prompt more calls to change its structure.

"Look at the changes at the OCC recently. There are growing concerns that there's been a significant culture shift," said Mills. "Is this congressional Republicans and the industry trying to have more control over Curry than they currently have?"

Mark Calabria, director of financial regulation studies at the Cato Institute, meanwhile, said that a move to change the OCC into a board could also be the result of ongoing frustration over changes that have failed to take place, even with Curry at the helm.

"I think that there's a possibility of a little more traction, because of the sense that the OCC has been institutionally absent," said Calabria. "It's one of these things, if you spend a lot of time getting a person in place and it doesn't amount to a lot of change, you have to start asking whether it's about the person or not."

Calabria also noted that there is a distinction between truly independent agencies like the CFPB and agencies like the OCC, which is housed at the Treasury Department, a member of the president's cabinet. (The Treasury has limited say over the OCC's actions.)

"The sense is that you don't need a board to deliberate if the president is the ultimate decision-maker "\xA6 so it really isn't one person unchecked. With an independent agency, who ultimately is the person accountable to?" he said. "If they had set up the CFPB as part of the Treasury or as a direct report to the President, I think people would feel slightly better about it."

Some Hill watchers also said that the CFPB needs a board, unlike the OCC, because it lacks the same institutional history and mission.

"One of the real difficulties I think with the CFPB that you don't have with the OCC is that CFPB is a new agency. It doesn't have the culture or the established practices and procedures and institutional knowledge that the OCC has," said Oliver Ireland, a partner at Morrison & Foerster. "Number two is it is taking on a role that is different than the bank regulatory role. Currently, they are approaching it more as policemen of the institutions, rather than trying to establish effective markets. "\xA6 I think it requires a very careful balancing of interests."

Yet others said the question over whether there should be a commission or a single director was largely moot.

"Look at the Fed - they have seven governors with 14-year terms. They were charged with enforcing all of the consumer laws except for FTC's piece, and they absolutely fell asleep at the switch because of their dominance by one chairman, Alan Greenspan," said Cornelius Hurley, director of the Boston University Center for Finance, Law & Policy. "This idea that turning either the CFPB or the OCC into a commission is automatically going to make them more efficient regulators just doesn't hold a lot of water."