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Small Bank Support Key to Brown-Vitter TBTF Strategy

By: Victoria Finkle – April 25, 2013

Sens. David Vitter and Sherrod Brown are courting a key constituency - small banks - that they hope can help build support for their legislation to tackle "too big to fail."

While much of the attention to their bill, which was formally unveiled Wednesday, has focused on the tougher capital standards for the largest banks, the legislation provided small banks with added incentive to support the measure, including several regulatory relief measures.

That was enough to quickly earn the support of the Independent Community Bankers of America on Wednesday morning, a vocal ally that could help encourage senators to sign on to the bill.

"It doesn't cost anyone to be pro-ending 'too big to fail.' And now take that one step further by making this piece of legislation pro-community banks, and Sens. Vitter and Brown will be successful in expanding their support for this legislation," said Issac Boltansky, a policy analyst with Compass Point Research & Trading.

To be sure, the bill faces sizable obstacles, including likely opposition from the leadership of both political parties and the Obama administration.

As a result, its success depends on the grassroots support the bill is able to attract. To that end, Sens. Brown and Vitter made two significant changes to the bill from an earlier draft obtained by the media. For one, they ditched a planned across-the-board capital requirement of 10% that would have applied to all institutions, and instead left capital requirements alone for banks with less than $50 billion of assets (Large regional banks with less than $500 billion of assets would face an 8% requirement, while larger institutions would be required to hold 15%).

Secondly, the lawmakers added several regulatory relief measures, including provisions to expand the definition of "rural" lenders under the Consumer Financial Protection Bureau's mortgage rules and create an appeals process for banks unhappy with their regulatory exam ratings. Both items have been on community banks' wish list. (See "Cheat Sheet: Key Requirements of the Brown-Vitter TBTF Bill.")

Cam Fine, the president of the ICBA, asked bankers to support the bill at his group's conference on Wednesday.

"ICBA strongly endorses this legislation, and urges all community banks nationwide to join the association in advocating for the passage of this legislation," he said. "We're eager to get a bill number so we can grassroots this thing."

That was a sharp contrast to the American Bankers Association, a group that includes both small and large banks, which opposed the legislation.

"Forcing our nation's banks to shrink through higher capital requirements would have unintended consequences that would inhibit economic growth," said James Ballentine, the ABA's chief lobbyist, in a statement.

The regulatory relief provisions matter because they move the bill beyond something that critics say is punitive toward large banks and provide positive incentives for small banks to support the bill. That support could attract co-sponsors, particularly lawmakers from rural areas, that might otherwise have steered clear of the legislation.

"To the extent that they can show co-sponsorship from the ICBA that probably helps with co-sponsors in Senate," said Edward Mills, a financial policy analyst at FBR Capital Markets and former Capitol Hill aide. "The more co-sponsors in Congress, the more they can keep it in headlines and the more pressure they can put on regulators. The more pressure there is on regulators, the more likely you are to see changes take place."

Indeed, the Brown-Vitter bill may have an impact even if it doesn't become law, enabling regulators to go further with proposed capital requirements still under debate if there is significant lawmaker support.

Sens. Brown and Vitter didn't announce any new co-sponsors at a press conference Wednesday afternoon, but said they continue to have "productive conversations" with numerous lawmakers on both sides of the political aisle. Analysts said they've already been surprised by how much attention the legislative effort have received.

"I see a significant number of senators in support for the theme of this legislation - many more than for previous iterations of this idea," said Boltansky, while cautioning that "shouldn't be confused in any way with the possibility of passage."

It's not likely that the duo, who otherwise occupy opposite ends of the political spectrum, have the support right now to get the bill to the Senate floor, absent movement by Senate Banking Committee Chairman Sen. Tim Johnson to get behind the legislation.

Johnson has so far stayed mum on the issue of the Brown-Vitter bill. A spokesman for the panel said the South Dakota Democrat "looks forward to reviewing the details of the bill." A spokeswoman for the top Republican on the panel, Sen. Mike Crapo of Idaho, declined to comment on the legislation.

"What's going on behind the scenes is there's going to be this backroom negotiation with Brown and Johnson over holding hearings at the subcommittee level and what role does Johnson play," said Mark Calabria, director of financial regulation studies at the Cato Institute.

Brown serves as chairman of the financial institutions and consumer protection subcommittee, meaning he will likely host one or two hearings in coming weeks and months, bringing more attention to the issue of "too big to fail" and allowing other members to study the bill more carefully.

"He can have hearings on it in his subcommittee," said Calabria. "The only reason he wouldn't is if leadership really clamped down on him, and that's a bit of overkill in my opinion."

Beyond that, it's unclear Brown and Vitter would even want to bring the bill to the Senate floor until they can enlist more lawmakers to their cause.

"I don't think you'd want to put it to a vote unless you thought you'd have a majority," said Mills. "Anything less than low 40s would be seen as a really big concern. You hurt your cause when you show you don't have the support for the legislation you're supporting."

He added: "There's a very strong lobby against this, and the regulators are supposed to implementing the will of Congress. If they can show that the will of Congress is against this that strengthens the opposition's hand."