

# AMERICAN BANKER.

## 'Too Big To Fail' Bill Puts Banking Chairmen in Tight Spot

By: Victoria Finkle – May 1, 2013

---

A renewed push to end "too big to fail" has attracted unprecedented attention in the last few months from prominent lawmakers, regulators and pundits, but two key players have stayed on the sidelines.

Both Sen. Tim Johnson, chairman of the Senate Banking Committee, and Rep. Jeb Hensarling, chairman of the House Financial Services Committee, have yet to take a position on bills that would boost capital standards at the biggest banks or break up the largest institutions.

Support from banking panel leaders will ultimately be crucial to the fate of any legislative action, from hearings to bill markups to support on the chamber floor.

"The chairmen of the two banking committees are the roadblocks right now to action," said Jaret Seiberg, a policy analyst at Guggenheim Securities. "By not being early endorsers of breaking up the banks, they've limited the ability of bills to advance."

But Hill observers cautioned that neither leader has reason to rush into the debate early.

"As a chairman you have the responsibility to move legislation through your committee in a successful manner, and you want to take the opportunity to solicit the opinion of colleagues on both sides of the aisle to see what the right path is that will garner strong majority support on the committee," said Aaron Klein, director of the financial regulatory reform initiative at the Bipartisan Policy Center. "That process takes time and is informed by other members on the committee putting out thoughts, including legislation, to gauge reaction. The chairman is usually the last actor in the process."

For Johnson, the issue has been somewhat problematic. He has long been a champion of community banks and close to the Independent Community Bankers of America, which has thrown its support behind a bill by Sens. Sherrod Brown, D-Ohio, and David Vitter, R-La., to significantly raise capital standards at the megabanks.

Yet Johnson is also a staunch defender of the Dodd-Frank reform law and hails from a state where a large bank - Citigroup - is one of the top employers.

Perhaps as a result, the South Dakota Democrat has been largely silent on the issue up to now, even after Sens. Brown and Vitter introduced their bill last week. A spokesman for Johnson said he is reviewing the bill, which is designed to end "too big to fail," but would not comment further on the chairman's position on the issue more broadly.

One key factor for Johnson is his ties with Citigroup, which along with other major banks that are credit card issuers in South Dakota, is certain to be affected by any "too big to fail" legislation.

"He has a large bank operating in his state, and it is actually employing people and bringing revenue into the state's economy," said Brandon Barford, a vice president at ACG Analytics.

Johnson announced earlier this year that he will not run for reelection in 2014, but Citigroup's employees and political action committee were Johnson's top contributors during the 2012 election cycle, donating \$79,850, according to the Center for Responsive Politics.

The chairman has consistently defended the Dodd-Frank Act over the past several years, putting him in line with the White House, which continues to argue that the reform law already ended "too big to fail."

"I think he's trying to walk this tightrope of not really saying anything that questions whether Dodd-Frank works or not," said Mark Calabria, director of financial regulation studies at the Cato Institute.

Moreover, Johnson is known as a relative moderate within the party, while much of the focus on "too big to fail" continues to come from those on the far left and the far right.

"It's also not consistent with his political lineage," Calabria added. "He's never been a scream-from-the-rafters, break-up-the-big-banks advocate, so why should he become one just because he has 19 months left as chairman?"

Nevertheless, the time may come when Johnson will be forced to weigh in on the issue more directly, if the drumbeat for reform continues. Johnson's first step would likely be to hold more hearings on the issue for the full committee, analysts said. Concerns about "too big to fail" have been raised at several hearings with regulators already this year, and Brown, who is chairman of the financial institutions and consumer protection subcommittee, has indicated that he'd like to host a hearing in the subcommittee on the issue now that his bill with Vitter has been unveiled.

But for the time being, Johnson can continue to point to the work regulators are doing under the Dodd-Frank law.

"One way to address a political problem is to say we have given the regulators authority to do something - let's put pressure on them and look at their progress, but give them time," Calabria said.

But he added: "Members on his side are going to put pressure on him. How he reacts is going to be a big part of this."

Hensarling, meanwhile, a free-market conservative who dislikes Dodd-Frank, faces different challenges when it comes to further reforms to confront "too big to fail." He has spoken out strongly against the issue, but recently offered few details on how to fix it.

The Texas Republican is still relatively new to the top post, after replacing Rep. Spencer Bachus, R-Ala., as banking panel chairman in January. While there's little question that

Hensarling believes government should not bail out big banks and that the Dodd-Frank law failed to solve the problem, it's unclear what legislative path he would ultimately support instead.

He's repeatedly argued in favor of repealing Title II of the Dodd-Frank law, and previously pushed for changes to the bankruptcy code as an alternative method for winding down large, failing firms. Hensarling has also indicated some support for higher capital standards, a central focus of the Brown-Vitter bill unveiled last week.

"Nobody is really sure where Chairman Hensarling stands on breaking up the banks," said Seiberg. "We know he wants an improved bankruptcy process, we seem to think he favors higher capital requirements, but it's unclear how far he really would want to go.

"From the perspective of a committee chairman, that's probably a good position to be in, because there's little upside to being a big advocate on this, and there's probably more benefit to being seen as a thoughtful committee leader who's not jumping the gun."

A spokesman for Hensarling called the Brown-Vitter bill "encouraging" in a statement last week, reiterating that the issue is an important one for the lawmaker.

"Chairman Hensarling's top priorities include ensuring that no bank is 'too big to fail' while taxpayers are forced to fund government bailouts. It is encouraging to see a bipartisan group of senators agree that this is a problem that was not solved by Dodd-Frank," the statement said.

The spokesman added that the banking panel will continue to hold hearings on the issue, but would not elaborate on Hensarling's strategy beyond that.

Speaking to ICBA last week, before the Brown-Vitter bill was introduced, Hensarling left his position open-ended.

"There are those who say it is now time to downsize some banks. It is not my intention to downsize banks. It is not my intention to supersize banks," Hensarling said. "It is my intention to right-size banks as determined by the reduction of moral hazard, the reinstatement of market discipline and a level playing field."

Calabria suggested Hensarling is still looking at his alternatives.

"What they're doing is going through their options," he said. "I think in the next four to six weeks you'll start to see, if not actual pieces of legislation, more concrete details in the House."

But it is still unclear how quickly the Texas conservative will move on the issue, given his focus on reforming government-sponsored enterprises Fannie Mae and Freddie Mac and the Federal Housing Administration.

"Hensarling, in particular, has a number of things that he wants the committee to explore, including GSE reform, which is a huge potential undertaking," said Tony Fratto, a partner at Hamilton Place Strategies. "They have to be careful how they manage the committee's work and time - they have to be careful using that time and energy, putting it towards addressing issues that are necessary."

It's also extremely unlikely that the Brown-Vitter bill or any other "too big to fail" legislation is going to advance in the Senate anytime soon. That gives the House Republican more time to develop his own approach.

"I don't think it's in his best interest to put out specifics yet. Since it is highly unlikely for the Senate to consider legislation in a timely manner, he can keep his powder dry and wait until the time is right," said Barford, who added that the issue could become more important for Hensarling if housing finance reform is sidelined, especially as the 2014 elections loom closer.

"Should progress on housing issues be blocked, I could see him pivoting towards this theme in an election year," he said. "It plays well politically for many House Republicans who are eager to find common ground with voters who espouse more populist views."