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Oversight by House GOP to Shape Rules

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WASHINGTON - Though House Republicans are almost certain to be frustrated in trying to repeal provisions of the Dodd-Frank regulatory reform statute, they are likely to find more success in using oversight powers to curb the law's implementation.

GOP lawmakers have vowed to closely watch regulators as they write rules to enforce the law, and observers said this would probably make the agencies much more cautious.

"It could have a pretty significant influence on what they do because I can tell you from personal experience it's not very much fun to be dragged up to Congress and being blamed for overstepping or blamed for harshness in terms of regulation," said Bob Clarke, a former comptroller of the currency and now a senior partner at Bracewell & Giuliani LLP.

Though Democrats agree that oversight is important, the GOP approach is likely to be much more aggressive because most opposed the bill's passage.

"It's going to be more intense than usual," said William Isaac, the chairman of LECG Global Financial Services and a former chairman of the Federal Deposit Insurance Corp. "What the bill did was, it delegated, excessively, directions to the regulators to do things, and my guess is the Republicans are not happy about that, ... and they are going to come down pretty hard."

The effort to influence regulators as they write the rules has already begun. Rep. Spencer Bachus, R-Ala., who is the leading candidate for chairman of the House Financial Services Committee, sent a letter to the Financial Stability Oversight Council warning of the dangers of the so-called Volcker Rule and its "damage to U.S. competitiveness and job creation."

"It seems to me that is the start of what seems to be a lot of efforts by Republicans to limit the damage the Dodd-Frank bill is likely to cause," said Peter Wallison, a co-director of the American Enterprise Institute's program on financial markets deregulation. "Letters from lawmakers are very, very influential."

Observers said Dodd-Frank is even more prone to congressional influence than other financial laws because it left so many details up to regulators. "The bill is unusual because it left a lot of discretion for the regulators," said Joseph Engelhard, a senior vice president at Capital Alpha Partners. "Especially in the area of derivatives, even tiny technical changes can have a big impact."

But Republicans are expected to direct most of their attention to the Consumer Financial Protection Bureau. Of all the parts in the bill, the GOP objected most strenuously to the creation of a consumer protection agency, which it argued has too much power and will damage the economy.

"If you are at the CFPB and you have oversight hearings, you know they are going to be critical because the Republicans are in charge and nitpicking and didn't support your efforts in the first place," said Cornelius Hurley, a professor at the Graduate Program in Banking and Financial Law at Boston University School of Law.

Rep. Darrell Issa, who is expected to be chairman of the House Oversight Committee, made clear last week that he plans to hold hearings on the CFPB, in particular, in addition to ones on the government-sponsored enterprises and other Dodd-Frank-related topics. Issa also raised concerns about Elizabeth Warren's appointment to set up the new agency.

"The only thing out there I can see Republicans being concerned about is the consumer protection board," said Peter Barrett, an industry lobbyist. "If I were Elizabeth Warren, I'd be concerned."

But Satish Kini, co-chairman of Debevoise & Plimpton LLP's banking group, said it also is clear the GOP will focus on the Volcker Rule, which bans proprietary trading and limits the size of commercial banks' investments in private-equity and hedge funds.

"The ones they will care about more are in the consumer area and Volcker," he said. "Those are the areas that have drawn the most attention, and they will probably try to exert the most influence in those areas. There may be other areas where the lawmakers may not have the attention span to delve into the details regulators will be going into."

In some cases, the added attention could benefit regulators. Mark Calabria, the director of financial regulations studies at the Cato Institute, said FDIC Chairman Sheila Bair may find support for her agency's proposals to force creditors to take significant haircuts after a large bank fails.

"I think Sheila would be much more aggressive if she wasn't fighting [Treasury Secretary Tim] Geithner along the way," Calabria said. "I think this is one way she is going to be more aggressive in making sure creditors take more haircuts so, essentially, making sure the rules of the game are known ahead of time."

Bankers are already holding out hope that Republicans can plead their case to regulators to soften the Dodd-Frank rules.

"The regulators are trying to implement the most massive regulatory bill in terms of number and scope of regulations ever enacted, and I think some oversight where you can talk outside of 'Technically, this is what the law says to do,' and talk more broadly on what this does to the economy can be very valuable," said Ed Yingling, the president and CEO of the American Bankers Association.

He said he hopes Republicans will help the industry shape the derivatives provisions and the Durbin amendment allowing the Federal Reserve to regulate interchange fees on debit cards.

Cam Fine, the president and CEO of the Independent Community Bankers of America, agreed that oversight hearings could shape the derivatives language, the Volcker Rule and the interchange provision.

"There's a general feeling amongst businesses at large that the House will be more friendly to business concerns," Fine said. "On Dodd-Frank, we are hopeful this can be moderated."

Clarke said Republican oversight may let some regulators take a moderate approach.

"The Republicans may be able to give the regulators some cover because they will have to defend what they've done if people think they've gone overboard," he said. "If you have somebody watching over your shoulder, it gives you an opportunity to say, 'We don't have to do all of that, we can accomplish the same with a lot less.' "

Richard Carnell, an associate professor of law at Fordham University's School of Law and a former Treasury official, said he fears this combination will lead to rules weaker than they should be.

"My concern is with the areas where more stringent standards will yield real benefits in the long run but they do have costs at the time," he said. "You'll have those who stand to benefit from lower standards complaining to the Hill and then you will have members of Congress saying, 'Why this rule, why not something more lax, why not exemptions for small, whiny banks?' ... What we risk seeing happen is regulators will do something but fall well short of the kinds of rules and standards that we need to have a good shot at preventing another debacle."

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