Reining in the regulators

In the House and Senate, conservative lawmakers push back

By Nick Thornton

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In committee staff rooms and on the floor in both chambers of Congress, battle lines are being drawn as the legislative pipeline fills up with efforts to roll back regulators' authority over the financial services industry.

In the Senate, Finance Committee Chairman Orrin Hatch, R-Utah, has made repeated public pledges to make his SAFE Act, which proposes comprehensive change to the country's retirement industry, a legislative priority this year.

A key provision of that bill would gut the Department of Labor's efforts to apply a stricter fiduciary standard across the industry.

As the DOL's efforts to do so extend into a fifth year, a leaked memo from senior White House advisors suggests the DOL will require the industry to adopt new consumer protections that ensure brokers follow a "best interest standard" and that they refrain from "self-dealing" transactions.

News of the memo is likely to fuel lawmakers' already concerted efforts to rein in regulators.

In the House, Rep. Ann Wagner, R-Missouri, who led a bipartisan effort in 2013 to delay the DOL's proposed new fiduciary standard, told BenefitsPro that she plans to reintroduce legislation to combat the DOL's "harmful rule."

"While the Department of Labor claims this rulemaking will remove conflicts of interest for financial advisers, it will in fact increase costs to individuals and families saving for retirement," she said.

“Washington should be empowering those who want to save for their retirement, not making it more difficult,” she added.

Wagner isn’t alone in the House in the effort to redefine regulators’ authority.

Last week, the House passed bill H.R. 37, a compendium of previous legislation that attempted to rollback provisions of the Dodd-Frank Wall Street Reform Act that died in the Senate before Republicans regained control there.

Also, Rep. Jeb Hensarling, R-Texas, chairman of the influential Committee on Financial Services – which exercises authority over the Securities and Exchange Commission, the mutual fund industry and the investment advisor industry – unveiled an agenda this past week also taking aim at Dodd-Frank, as well as the powers of the Financial Stability and Oversight Council that law created.

The FSOC can deem bank and non-lending intuitions as “systemically important financial institutions” — effectively a tag that says such SIFIs are “too big to fail.”

The council, which has 10 voting members including chairs of the Federal Reserve, Treasury and the SEC, recently voted to designate MetLife as a SIFI. The country’s largest insurer has filed suit in federal court challenging the designation.

The power to tag a non-bank institution as a SIFI has ramifications for retirement savers. The FSOC has solicited comments from the industry while it considers whether fund companies such as BlackRock and Fidelity (almost $6 trillion in assets between the two) are also too big to fail.

In a speech at the Cato Institute last year, Hensarling said Dodd-Frank gives regulators power more appropriate for a “Soviet-style command-and-control economy” than for a free-market system.

He also said designating managers of retirement assets as SIFIs could cost as much as 25 percent in returns on assets, or about $108,000 per investor.

For their part, regulators appear ready to stand their ground.

In a recent Washington Post op-ed, Treasury Secretary Jack Lew, who chairs the FSOC, said legislators fighting to repeal the council’s and other regulators’ authority “make no secret that they are gearing up for a multi-front assault to weaken effective oversight of Wall Street and protections for Main Street.”

Their efforts, wrote Lew, will include underfunding regulatory bodies and amount to an agenda that “would take us back to the dangerous conditions that existed before the financial crisis.”

That’s a powerful argument in the eyes of the public, said Hester Peirce, a senior research fellow at the Mercatus Center at George Mason University, a think tank that researches “market-oriented” reforms of financial markets.

“What happens in Congress remains to be seen. Strong statements about not wanting to roll back financial reform can have a powerful effect — it becomes a PR game,” said Peirce.

After the financial crisis, Congress felt an urgency to do something quickly. The problem, says Peirce, is that Dodd-Frank became like a “Christmas tree.”

“Everyone that wanted something passed hung it on the tree.”

Since then, Peirce says some legislators have come to view Dodd-Frank as a perfect law, even though its imperfections were widely recognized when the bill was passed, and that future amendments would be necessary.

The law’s unintended consequence was to give regulators too much power, and too much information, critics say.

“FSOC has drawn fire from both political sides because its process in designating institutions as SIFIs hasn’t been transparent. Dodd-Frank’s unintended consequence was to give regulators too much power, and too much information,” Peirce said.

There was no shortage of regulatory power before the financial crisis, Peirce said, and so the push to reign in the regulators isn’t a surprise.

“AIG had hundreds of regulators. They failed because they’re human. Regulators can try to protect against the last crisis, but they have no power to prevent a new one. It’s hard to plan for the unexpected when no one knows what the future holds,” he said.

Criticisms over the lack of transparency in the FSOC’s SIFI designation process have not fallen on deaf ears with regulators.

This past week, in an open meeting of the council, members signaled their intention to improve communications with institutions under review, provide more public information, and allow firms already designated as a SIFI access to more data when their designation comes under annual review and they re-present their case to regulators.

That willingness, along with the political blowback of “rolling back Wall Street reforms” threatening centrist lawmakers, may help to head off legislative action aimed at restraining regulators.

“FSOC’s recent efforts may placate some. And that may make legislative reform harder,” said Peirce.