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Panel Vote Is First Test Of Proposed Reg Revamp

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WASHINGTON - The House Financial Services Committee is scheduled today to begin debating the first two pieces of regulatory reform, and its vote will set a crucial marker before the chamber's final negotiations.

The panel is likely to pass a bill designed to strengthen regulation of derivatives and then act on legislation to create a consumer protection agency.

Though the voting is officially scheduled for today, debate is expected to last the rest of the week, and questions remain about support for some provisions of both bills.

Still, Financial Services Committee Chairman Barney Frank appears determined to press ahead soon so that he can bring a reform package to the House floor next month. "What they are trying to do is keep some momentum on this issue," said Oliver Ireland, a partner in the Morrison & Foerster LLP law firm.

The creation of a consumer protection agency remains the most controversial part of reform and is staunchly opposed by the banking industry. A July vote on the bill was delayed so that advocates could fight back against industry opposition and build support.

Some changes in the industry's favor are likely to be adopted, but Frank is expected to fight to keep the bill as tough as possible to ensure a better bargaining position with the Senate later.

"He's going to keep it as strong as he can with keeping his own caucus together, and that's the challenge," said Mark Calabria, a former Republican aide to the Senate Banking Committee who is now the director of financial regulation studies at the Cato Institute. "From the consumer advocates' perspective, this is as good as its going to get for them. I'm sure they'll look at this as watering down from here forward."

The committee also plans to vote on legislation to advance the effective date of recent credit card reforms and to exempt certain small businesses from identity theft guidelines.

All the bills are expected to pass, but the debate over the regulatory reform bills could become heated. Bankers oppose the creation of an agency but are also seeking changes that would limit the agency's authority and keep national bank preemption powers intact.

As proposed, the bill would remove consumer protection functions from the banking agencies and give them to the new agency led by a director appointed by the president and confirmed by the Senate, who would have broad authority to regulate consumer financial protection.

The legislation would also let the agency enforce consumer protections in several existing laws, like the Home Mortgage Disclosure Act and the Truth in Lending Act but give the states power to set and enforce tougher standards, including against national banks.

Preemption remains one of the biggest sticking points.

Rep. Melissa Bean, a moderate Democrat from Illinois, remains committed to narrowing the bill's broad erosion of federal preemption; she is working on an amendment to preserve some preemption of state standards for national banks and federal thrifts.

Though many of the panel's moderates are thought to be sympathetic on the issue, with Frank expected to vote against it, it was unclear whether the measure could find sufficient support to pass.

Sources said Tuesday that Bean might only offer and withdraw the proposal without calling for a vote on it but pledge to keep working on the issue.

Rep. Mel Watt, the chairman of the panel's monetary policy subcommittee, has entered the fray and is working on the issue, too. In an interview Tuesday, he said that he supports some preservation of federal preemption but implied it should be very narrow and said he hopes the issue can be resolved quickly.

"I think they are getting close to some language on preemption that hopefully will be adopted," he said, "but it is still a work in progress, and even after the markup we'll continue to work with people. I believe we will have sufficient votes to pass it in a revised form, and I think we'll have enough votes to pass the bill out of committee."

Asked whether there should still be some federal preemption for national banks, Watt said, "I think we're trying to reach some balance, yeah, probably some, but that doesn't say very much ... . We would like to resolve it as quickly as possible, but we are not going to quit working on the bill just because it gets marked up."

Consumer groups are also pushing to ensure any preemption is weak. "Excessive preemption contributed to the financial crisis," said Mike Calhoun, the president of the Center for Responsible Lending. "I'm confident that a strong bill will come out of the Financial Services Committee."

Though the banking industry is likely to push amendments that would preserve banking regulators' enforcement role, it was unclear whether it will succeed. Rep. Ed Perlmutter, a Colorado Democrat, is considering offering an amendment that would keep consumer protection enforcement with prudential regulators for community banks.

Watt said he opposes such a move but conceded the issue remains in play.

"I think that's a step too far," he said in an interview last week.

In contrast, the vote on the derivatives bill is expected to be easier. Frank's bill to regulate derivatives was already the most lenient of the three options for regulating over-the-counter markets, including bills by the Obama administration and House Agriculture Committee Chairman Collin Peterson, D-Minn.

Frank is expected to propose an amendment to ease some of the requirements further, including widening the exemption from clearing requirements for firms that use derivatives as hedging tools.

Smaller companies and banks who say they use derivatives to hedge their risk exposures complained that having to clear their derivatives trades through a central party would be too difficult. The amendment would narrow the clearing requirement to "major swap participants" that took substantial net positions in the derivatives market and created "net counterparty exposure."

Though the Commodity Futures Trading Commission and Securities and Exchange Commission pushed for other changes in the bill last week, including a mandatory requirement that all standardized derivatives be exchange-traded, Frank is not expected to include them in the latest draft of his bill.

Rep. Scott Garrett, R-N.J., acknowledged that the bill is the least onerous of recent proposals to regulate derivatives but stopped short of saying he would vote for it.

"He's moved in the right direction," said Garrett, but he added that he still has issues with the bill. "There are such ambiguities there that the cost of the derivatives trade may still go up and the so-called end-user carveout may not be all that [it] seem[s] to be even in the best-case scenario."

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