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American Banker

May 10, 2011 Tuesday

Shelby the 'Gatekeeper'; His list of banking nominee holdups grows

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SECTION: WASHINGTON; Pg. 1 Vol. 176 No. 72

LENGTH: 1034 words

WASHINGTON - While President Obama is the one who chooses nominees for key financial services policy posts, it is a Republican from Alabama, Sen. Richard Shelby, who appears to have a big say in whether a candidate is actually confirmed.

Shelby has already blocked nominations for the Federal Reserve Board and Federal Housing Finance Agency, and is leading the charge to hold up any Consumer Financial Protection Bureau nominee until structural changes are made to the agency.

Although in the minority, Shelby has effectively become the one who makes or breaks banking nominations, thanks in part to his influence with fellow Republicans and his long tenure on the banking panel.

"In terms of nominations in general, he is going to be a pivotal player in making sure they move through Banking," said Mark Calabria, a former top aide to Shelby and a director of financial regulations studies at the Cato Institute. "He is going to have close to a veto role."

Shelby has already exercised that role. He has blocked the nomination of Peter Diamond, who won a Nobel Prize for economics last October, by declaring him unqualified to serve on the Federal Reserve. The White House also withdrew its nomination in January of Joseph Smith to be director of the FHFA after Shelby called him a "lapdog" and a "tool" of the administration. Last week Shelby, along with 43 other Republican senators, announced they would not support any nominee for the CFPB unless structural changes are made.

Amy Friend, a managing director at Promontory Financial Group and the former chief counsel to the Senate Banking Committee, said the Smith and Diamond nominations prove Shelby's influence.

"Joe Smith seemed to be a moderate, middle-of-the-road nominee, and the fact that Sen. Shelby chose to stop that nomination made people sit up and take stock," Friend said. "Now people are naturally looking to see what Sen. Shelby's reaction will be, and it's not clear what criteria he'll use to judge any prospective nominee."

While observers said Shelby approaches nominations on a case-by-case basis, they expect him to closely scrutinize the long list of pending nominations. The administration is expected to offer a slate of nine appointments, including the heads of the Federal Deposit Insurance Corp. and Office of the Comptroller of the Currency.

Shelby is also unafraid to use the advice-and-consent role of the Senate to pursue other policy objectives. Although he unsuccessfully fought last year to limit the CFPB's authority, Shelby has reopened that battle by saying he will not agree to any nominee for the agency's director unless legislation is enacted that puts the bureau through the congressional appropriations process and gives banking regulators more leeway to override the CFPB's actions.

"Shelby has considerable clout, because the Democrats lack 60 votes to defeat a filibuster," said Jaret Seiberg, an analyst for MF Global Inc.'s Washington Research Group. "So it's going to be very hard to get a nominee through if

Shelby is objecting. Shelby has enough respect and clout within the Republican caucus to hold up most nominees. ... Shelby is a gatekeeper. You are not going to get through the gate if Shelby doesn't want you to."

To be sure, Shelby has not rejected all of Obama's financial services nominees.

While he blocked Diamond's nomination last year, Shelby's support helped win confirmation for Janet Yellen to become the Fed's vice chairman, and Sarah Bloom Raskin to join the central bank's board.

A spokesman for Shelby said the Alabama Republican evaluates nominees according to their qualifications on a case-by-case basis.

But there is little doubt, observers said, that the nomination process has become tougher in the postcrisis era, especially as banking issues are decidedly more partisan.

"Shelby has long felt that the process of enacting the Dodd-Frank Act really railroaded him and didn't give him the traditional last-minute considerations of the other side so he's still on the warpath," said Joseph Engelhard, a senior vice president at Capital Alpha Partners LLC. "Anything to do with Dodd-Frank, Shelby's attitude is our side was completely shut out in the end and we have to exert our rights for the minority and this is one way to do that."

Jerry Buckley, co-chair of BuckleySandler LLP, said the crisis has definitely raised the stakes.

"The fact that we have had an economic meltdown attributed to the financial services industry and partially attributed by the regulation of the financial services industry means that it's a much more high-profile time," Buckley said. "It's perceived as the industry that got the country in a ditch, so the importance of financial services regulators is much more enhanced."

Industry observers said the administration would be wise to consult with Shelby more on the nomination process. With the upcoming slate of financial services nominees, V. Gerard Comizio, a partner at the corporate department at Paul, Hastings, Janofsky & Walker LLP, said he expects some bartering over nominees to gain Shelby's support.

"I thought from what I've heard that this is a good old-fashioned horse swapping," Comizio said. "For the White House to have its slate of nominations, they are going to have to cut some deals, and that may include considering candidates offered up by the other party."

Since the FDIC's five-member board can only have three members of the same political party, many expect Shelby to have a lead role in helping pick the relevant Republican nominees, including the FDIC's vice chairman.

"When they get around to nominating people on the FDIC I wouldn't be surprised if he asked for the two Republican nominees before he is willing to move on the Democrat," said Wayne Abernathy, a former top Senate Republican aide and now executive director of financial institutions policy and regulatory affairs for the American Bankers Association.

Many observers also said Shelby's actions have helped heighten the importance of the ranking member position, which often can be relatively sidelined.

"Shelby seems more assertive than your traditional ranking member in recent history," Abernathy said.

"I think it's because Shelby is taking the job seriously."

URL: <http://www.americanbanker.com/>

LOAD-DATE: May 9, 2011

LANGUAGE: ENGLISH

PUBLICATION-TYPE: Newspaper

JOURNAL-CODE: AB

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