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Consumer Agency Has Legs But Is Still Without a Home

By Stacy Kaper, *American Banker*
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WASHINGTON — Where to put a proposed new consumer protection division appears to have become a game of musical chairs.

In the past few days lawmakers have traded proposals and counterproposals, with everyone from the Federal Reserve Board to the Federal Deposit Insurance Corp. and the Treasury Department discussed as possible locations for the bureau.

So far, at least, none of the suggestions has drawn a consensus, leaving the fate of the issue, and the reform bill itself, up in the air. Still, some saw it as a positive sign that lawmakers are actively seeking a solution to what has become the trickiest part of reform: how to beef up consumer protections.

"This is probably the best signal yet that financial reform is probably going to start to move," said Jaret Seiberg, an analyst with the Washington Research Group division of Concept Capital.

But the next step remains unclear. Dodd opened negotiations on Friday by suggesting to Sen. Bob Corker that the new consumer protection agency should be a bureau within the Treasury, headed by a presidentially appointed director. But the Tennessee Republican rejected that idea, and instead suggested the bureau be part of the Fed.

Sen. Richard Shelby, the panel's lead Republican, offered two more options on Monday: create a consumer protection council, made up of regulators, that writes new rules or create a consumer protection division within the FDIC.

According to documents circulated by lawmakers on Monday, Shelby is proposing that consumer protection be housed in the FDIC and led by a presidentially appointed, Senate-confirmed director for a five-year term. That division would have its own board, which would include the FDIC chairman, comptroller of the currency, state banking representative and two independent members.

The division would be funded by earnings from the Deposit Insurance Fund and fees, and would have authority to write all rules implementing consumer protection statutes. The Shelby plan has a belt-and-suspenders twist. The head of the consumer division would report to the FDIC chairman, and that agency's board would have to approve all proposed rules by a majority vote.

Under the plan, the consumer division would have enforcement power over all state-chartered banks and some authority over large state-chartered mortgage issuers. It would have to coordinate with the OCC and the Fed with respect to enforcement of federally chartered banks and holding companies, Shelby said.

The Alabama Republican also put forth a competing plan, which would call for the creation of a Financial

Products Consumer Protection Council.

That council would be headed by a presidentially appointed chairman, and include the head of the proposed Financial Institutions Regulatory Administration (the proposed combination of the OCC and OTS), and the chairman of the FDIC. According to documents from Shelby, the council would have the power to write new rules, but enforcement would be left entirely to the banking regulators. The FDIC would get some additional authority to enforce consumer rules against large state-chartered mortgage issuers.

Mark Calabria, a former top aide to Shelby, said the lawmaker suggested the FDIC in part because of Chairman Sheila Bair, a Republican who is still seen as very pro-consumer but who shares fears about letting consumer protections trump safety and soundness regulations.

"The FDIC was partly driven by how much they know Dodd likes Sheila Bair," said Calabria, the director of financial regulation studies at the Cato Institute. "I think there was a feeling that at least the FDIC is more sympathetic to what they've tried to achieve. The FDIC obviously already has a board that mirrors the regulatory community. ... In some sense it's pretty close to having a council do it in that you already have financial regulators on board."

But William Isaac, a former FDIC chairman, said he preferred a consumer protection council.

"Of those ideas I think that the Shelby proposal for a council led by a presidential appointee with FIRA and the FDIC on its board is the one that offers the most promise of breaking this deadlock," said Isaac, the chairman of LECG Global Financial Services. "It creates a separate unit to oversee the consumer activities but it forces it to coordinate with the banking agencies by putting them on the board that actually controls it."

Asked about the proposal on Monday, FDIC Chairman Sheila Bair reiterated that the FDIC has endorsed the creation of a new agency with rulemaking, not enforcement, powers but did not address whether she would be willing to support placing a division within her agency.

While Corker is pushing the Fed to house a new consumer division, many questioned whether that idea made sense for Democrats. Dodd has sharply criticized the Fed for its failure to use existing consumer protection powers before the crisis. "Since Dodd's hobbyhorse has been 'we are only here because the Fed failed on Hoepa' ... it would be sort of surprising," Calabria said.

None of the alternatives, meanwhile, appear acceptable to consumer groups. Travis Plunkett, the legislative director for the Consumer Federation of America, said even Dodd's suggestion to put a bureau into the Treasury was too soft. "We're very troubled by it. The main concern overall we thought it compromised the autonomy of consumer protection," Plunkett said.

Still, several observers said lawmakers do not appear that far apart, and predicted a deal could be struck.

"In my experience when you get at this point in Washington, D.C., where everyone is saying 'we need a bill' you find a way to compromise," said William Longbrake, an executive in residence at the Robert H. Smith School of Business at the University of Maryland.