March 8, 2010 Monday

Watchdog's Barking Obscures Bill's Teeth

BYLINE: By Steven Sloan, CQ Staff

LENGTH: 1008 words

As Senate talks on a financial regulatory overhaul drag on, the chief authors of the bill are increasingly prone to point out that the legislation will include more than the consumer protection provision that has stirred so much controversy in recent weeks.

Though the outcome of that specific debate is uncertain, the bill that ultimately emerges from the Senate Banking, Housing and Urban Affairs Committee will dramatically reshape corners of the financial services industry well beyond consumer protection.

"There are like 11 titles to this bill that are very complex," Bob Corker, the Tennessee Republican who has played a central role in the bipartisan negotiations, said last week. "What you don't realize is there are literally meetings going on until one or two in the morning every day on all of those other titles. The substance of this bill is large."

Corker is behind the idea of housing the proposed consumer watchdog inside the Federal Reserve. Banking Chairman Christopher J. Dodd, D-Conn., is considering the concept, which has angered many of his fellow lawmakers -- including House Financial Services Chairman Barney Frank, D-Mass. -- who say the central bank abandoned its consumer oversight responsibilities before the financial crisis and should not have a role in that area going forward.

While the maneuvering over the consumer watchdog has taken center stage, some say its impact could be overshadowed by other provisions of the legislation -- notably its approach to regulating broad risks to the financial system and creating an orderly and less costly method for dissolving troubled financial giants.

"The lasting legacy out of this legislation is going to be the resolution power and the systemic risk council," said Jaret Seiberg, an analyst at Washington Research Group. "That's what's going to impact business going forward. Those parts should be getting more attention."

Since the end of February, Dodd and his aides have said a bill would be released within days. On Monday, sources again said legislation could be unveiled this week.

Scarce Details

On areas where Banking Committee negotiators have made significant progress, they are holding the details close to their vests. Corker and Mark Warner, D-Va., have said negotiations are largely complete on language that would give regulators more options to address the failure of large, complex financial institutions.

The duo are not publicly talking about specifics, but such companies are likely to end up in a resolution process that would send them into receivership, a legal process that regulators did not have before the crisis. Financial supervisors would be able to shut down the businesses instead of rescuing them with taxpayer bailouts.

But the big question is how regulators would cover the immediate costs of a large institution's collapse. A regulatory overhaul that the House passed in December (HR 4173) would create a "dissolution fund" paid for by levies on the financial industry. The fees would be imposed before a failure.

That concept, known as "pre-funding," is not expected to pass muster in the Senate, where there is concern that the fund could turn into a tempting kitty for lawmakers looking to pay for projects.

"I don't think that has much support in the Senate," said Brian Gardner, a policy analyst at KBW Inc. "A pre-funded mechanism will have a tough time with Republicans."

Still, Sheila C. Bair, the chairwoman of the Federal Deposit Insurance Corporation, reiterated the case for pre-funding in a speech at an economics conference on Monday. "This would not be another bailout mechanism," she said. "It would be a conscious departure away from the reflexive bailouts that have tended to occur during crises in the absence of such a resolution authority."

Senate Banking members remain on track to create a council of regulators to monitor broad, systemic risks to the economy. The Treasury secretary would head the council, and the Federal Reserve chairman would serve as the panel's No. 2 member. Lawmakers still need to determine how much sway the council would have, including whether it would have authority to force changes or simply make recommendations to financial supervisors.

How the council fits into the new regulatory framework will also depend on what jurisdiction lawmakers decide to leave at the Fed. If the central bank maintains power over the largest bank holding companies, it will effectively serve as the systemic-risk regulator.

Judd Gregg, R-N.H., said last week that he and Jack Reed, D-R.I., continue to make headway in talks over the regulation of derivatives. The debt crisis in Greece, fueled by complex derivatives transactions, may serve as a fresh reminder for Banking members about the need to rein in the instruments, whose value can fluctuate based on the direction of such underlying assets as stocks and bonds.

Lawmakers must answer other tough questions before they release a bill, including whether to attach the administration's proposal to ban financial institutions from proprietary trading that does not directly benefit customers. But once the consumer protection hurdle is cleared, the other debates are expected to quickly be resolved.

"Once they can get a consensus on [consumer protection], everything else should be easily resolvable," Seiberg said. "It's not that there are no differences. It's just that they will narrow."

Still, with a two-week recess approaching at the end of the month and a crowded calendar heading into the midterm elections, Dodd and the top Republicans on his committee are quickly running out of time to sign off on a bill, win approval on the Senate floor and work out differences with the House.

"The longer these talks go, the less likely a bill gets done this year," said Mark Calabria, director of financial regulation studies at the **Cato Institute** and a former aide to Richard C. Shelby of Alabama, the top Republican on the Banking panel.

Source: **CQ Today**
Round-the-clock coverage of news from Capitol Hill.