Business preps for ‘supreme court’ battle over consumer czar

The imminent reshaping of U.S. banking regulation creates a new center of gravity in Washington, a consumer czar with thousands of employees, a $400 million budget and power to impose federal rules on mortgages, credit cards and lay-away plans.

With the stakes high, business lobbyists who failed to kill the new Consumer Financial Protection Bureau in Congress now hope to influence President Barack Obama’s choice of director and the Senate’s confirmation proceedings.

“This is akin to a Supreme Court nominee for financial services,” Richard Hunt, president of the Consumer Bankers Association in Arlington, Virginia, said in an interview. “We are taking this very seriously.”

Public and private conversations in Washington about the job have centered on the likely candidacy of Elizabeth Warren, chairman of the congressional panel overseeing the Troubled Asset Relief Program, who is credited with conceiving the consumer agency.

Warren’s continuing criticism of Wall Street’s role in the financial crisis has given her celebrity status among consumer groups. Financial industry lobbyists and their political allies have said that the Harvard law professor’s activist approach and lack of business experience are drawbacks.

“I don’t think there are 60 votes for Elizabeth Warren. She’s burned a lot of bridges,” said Mark Calabria, director of financial regulation studies at the Cato Institute, a Washington free-market policy group.

Oklahoma Roots

Warren, 61, grew up in a working-class Oklahoma household, graduating from high school at 16 to attend George Washington University and then the University of Houston. She received her law degree from Rutgers and in 1992 joined the Harvard faculty, where she teaches bankruptcy and contract law.

As chief watchdog of the government’s TARP spending, Warren has clashed with banking and administration officials including Treasury Secretary Timothy F. Geithner. At a December hearing, she accused Geithner of favoring Wall Street banks while neglecting small businesses and homeowners. When Geithner said the government bailout of insurer American International Group Inc. was necessary to protect the financial system, Warren interrupted to tout the benefits of bankruptcy.

“Mr. Secretary, I come from a world of Chapter 11. People default all the time,” Warren said.

“You’re a national expert on this basic issue,” Geithner said. “But banks are different. AIG is effectively a bank.”

Consumer groups said they see Warren as the obvious choice to run the new agency. Her vision and zeal put her at the head of the pack of candidates, said Ed Mierzwinski, consumer program director at U.S. PIRG, a federation of state advocacy groups.

‘They Lost’

“Every bank in America set a goal of killing this agency. We won and they lost,” Mierzwinski said. “Congress created its skeleton. The first director will create its soul. We will not be looking for a caretaker.”

Through a spokesman, Warren declined to comment.

With a mandate to police financial activity that is “unfair, deceptive or abusive,” the new bureau may change the way credit cards, mortgages and other products are designed and sold. It has the power to investigate consumer complaints, impose standards on contracts and give purchasers new rights to sue. Industries within its reach include banks, mortgage brokers, retailers, credit-card issuers, debt collectors, credit-scoring companies and payday lenders.

“All of that power is in the hands of one person. It’s going to be the closest approximation to a czar that Washington has ever seen,” said Joseph T. Lynyak, a law partner at Venable LLP who represents financial services companies.

‘Awful Lot of Folks’

“It’s going to be surprising to an awful lot of constituencies,” he said. “For the first time the jurisdiction is not based on your charter or licensing but your activity or product or service, which is a very broad way of capturing an awful lot of folks.”

The structure of the bureau raises questions about the extent of its power that may not be answered for years. It will be born as an unusual hybrid -- an independent entity living within another agency, the Federal Reserve. While the Fed has no role in its rule-making, the law provides that the new Financial Stability Oversight Council -- a nine-member panel of regulators that includes the Fed chairman and the consumer czar -- can override a consumer bureau action if two-thirds of the members decide the rule threatens the safety or soundness of the financial system.

Centerpiece

Last year, Obama declared an independent agency to be a centerpiece of the financial reform blueprint he sent to Congress, prompting immediate opposition from industry. The U.S. Chamber of Commerce produced advertisements featuring fictional butchers, electricians and cabinet makers who said they would be hurt by the agency’s authority.

Under pressure from Republicans, congressional Democrats and the White House abandoned the idea of a separate agency and agreed to house the consumer bureau inside the Fed, while giving it autonomy from the central bank.

The Fed will do nothing more than “accept their mail for them,” said House Financial Services Chairman Barney Frank, the Massachusetts Democrat who was an architect of the legislation.

White House spokeswoman Amy Brundage declined to comment on speculation about who Obama might appoint. Besides Warren, among the names circulating through industry and consumer groups are Assistant Treasury Secretary Michael Barr and Treasury Deputy Assistant Secretary for Consumer Protection Eric Stein.

Other Names

Others mentioned in connection with the post, including Ellen Seidman, executive vice president for Chicago-based ShoreBank Corp., which specializes in housing and energy- conservation loans, and Nicolas Retsinas, director of Harvard University's Joint Center for Housing Studies in Cambridge, Massachusetts, have said they don't want the job.

FDIC Chairman Sheila Bair, Illinois Attorney General Lisa Madigan and Massachusetts Attorney General Martha Coakley, all put forth as potential candidates, have endorsed Warren, as has Frank.

"All the conversations about who's going to run it naturally start with her," said Raj Date, a former managing director at Deutsche Bank AG who now runs the Cambridge Winter Center for Financial Institutions Policy, a New York-based research group.

Banking lobbyists have raised concerns about Warren's preparedness for such a large role.

"The Congress has really delegated a great deal of authority to this agency. That's quite worrisome to the community banks," said Steve Verdier, a lobbyist for the Washington-based Independent Community Bankers of America.

'Vigorous Advocate'

While Warren "understands the difference" between community banks and larger institutions, she remains "a vigorous, vigorous consumer advocate," Verdier said.

"We're for somebody who takes a balanced approach to ensuring that the consumer is protected in a fashion that allows lenders to actually extend credit," said William Himpler, a lobbyist for the American Financial Services Association in Washington. "You're talking about somebody who touches every segment of consumer credit."

The Senate approved the finance overhaul yesterday and sent it to Obama, who said he would sign it into law next week.

The law instructs the bureau to merge staff members from consumer units in seven agencies, including the Fed, Treasury, Federal Trade Commission and Federal Deposit Insurance Corp.

Until a director is in place, the bureau will be managed by the Treasury Department. Once established at the Fed, it will be funded with 10 percent of the central bank's operating budget in its first year, rising to 12 percent by 2013, giving it start-up funding of about $400 million. The Fed's existing consumer affairs division has a $26 million budget and about 114 employees.

'Abysmal'

During the congressional debate over the financial overhaul, the Fed's consumer protection staff came in for withering criticism about its failure to protect borrowers during the subprime mortgage boom. "Abysmal", said Senator Jeff Merkley, a Democrat from Oregon.

Still, the new bureau should rely on the expertise of the Fed's staff, said Patricia McCoy, a law professor at the University of Connecticut and former Fed adviser. The problem in the past, she said, was not that the staff missed warning signs about the housing crisis. Rather, "they lacked the political power to get the Board of Governors to act. They simply didn't have that power," McCoy said.

Former Fed Vice Chairman Alan Blinder, who had called for a stand-alone consumer agency, said the Fed-based arrangement could create an “unworkable” bureaucracy that could hobble the effort.

“This is a political compromise between those who wanted to have an independent agency and those who wanted to denigrate the importance of the agency by putting it under the Fed,” Blinder said in an interview. “You start out with a limp for no good reason.”