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Incoming GOP majority would target Elizabeth Warren's CFPB

By Joseph Lawler
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No achievement of President Obama's faces more risk from a Republican Senate than the Consumer Financial Protection Bureau.

The bureau, created by the 2010 Dodd-Frank financial reform law, has never faced a GOP-led Senate, but it now faces that scenario, with polls favoring Republicans to win in several swing states in the November election. The Republican Party needs to pick up six Senate seats to take control of the chamber.

And although Obama still would have his veto power, which he would use to kill any attempt to dismantle the CFPB, analysts expect that a GOP-majority Senate Banking Committee, likely to be led by Sen. Richard Shelby of Alabama, would have several means of making business tougher for the consumer watchdog, which regulates financial products such as mortgages, credit cards and payday loans.

"Sen. Shelby, since the beginning of discussion of whether to form the CFPB or not, has taken a hard line," said Brandon Barford, a partner at the policy research firm Beacon Policy Advisors who worked for the senator during the 80-year-old Alabaman's previous stint as chairman.

The financial services industry fought hard to prevent the creation of the CFPB, which was the brainchild of prominent Wall Street critic Elizabeth Warren, now a U.S. senator for Massachusetts. Republicans also opposed its inclusion in the financial reform overhaul, saying it represented an intrusion of government into the market.

Since the bureau began operations in 2011, it has faced relentless opposition from the GOP-led House, especially from Financial Services Committee Chairman Jeb Hensarling of Texas, who in an interview with the Wall Street Journal Sunday called it "the single most unaccountable agency in the history of America."

Led by Hensarling, House Republicans have sought legislation that would curb CFPB Director Richard Cordray's ability to make decisions independently of Congress, including through bills that would give Congress control over its funding (which it currently receives from the Federal Reserve), replace its single director with a five-member board and limit its authority.

Shelby would likely pursue similar reforms, said Barford, including by seeking support from Democrats, although he and his committee colleague Warren are not likely to agree on much.

Subjecting the bureau’s funding to appropriations, a move that critics say would limit the regulators’ freedom to go after misbehaving banks, would be “extraordinarily hard” without a veto-proof GOP majority, Barford said. But CFPB critics and boosters alike think there is an outside chance it could become part of a broader package when the upper chamber debates big-ticket items in the 114th Congress starting in January.

More likely is changing the bureau’s structure to more closely resemble that of the Securities and Exchange Commission by including a panel of party-nominated commissioners. Democrats eventually will wish to maintain influence over the agency when a Republican gains the presidency and has the power to appoint the director, said Mark Calabria, the director of financial regulation studies at the Cato Institute who worked on the committee for Shelby.

What is certain is that the bureau would face adversarial oversight. Under Hensarling, a conservative like Shelby, the House Financial Services Committee has subjected the bureau to a series of hostile oversight hearings, one of the few levers the House has over the agency. Those hearings included a three-part probe into accusations of discrimination against CFPB employees.

Shelby would likely follow in Hensarling’s footsteps, Calabria said. “Hensarling and [Rep. Patrick] McHenry have set a pretty high bar for antagonism to the CFPB,” he said, adding that under Shelby “I expect it to be slightly less confrontational, but I certainly expect it to be confrontational.” Shelby's hearings would be more likely to be geared toward gaining Democrat buy-in for reforms than the House GOP's scorched-earth efforts.

“It’s possible they would draw more attention from the media because they could have these displays of opposition in both houses,” said Ruth Susswein, a consumer advocate with Consumer Action.

Susswein added that the House’s hearings have been “an enormous waste of taxpayer money and congressional time,” and argued that the bureau remains highly popular with the public, noting a recent poll that found that three-quarters of all voters favor the bureau when given a description of its purpose.

Alan Kaplinsky, the head of the Consumer Financial Services Group at Ballard Spahr who represents financial companies in matters involving the bureau, said it was “too speculative” to say which reform measures might be signed into law by Obama, but predicted that the Senate would hold a number of oversight hearings. “Good political theater,” he added.