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With OTS Gone, Who Will Get Its FDIC Seat?

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By Joe Adler

WASHINGTON — A fight is brewing over which agency should replace the soon-to-be-eliminated Office of Thrift Supervision on the board of the Federal Deposit Insurance Corp.

While the House regulatory reform bill would give that seat to the Federal Reserve Board, the Senate's version would assign it to the proposed consumer protection bureau.

The disagreement, which must be resolved by conferees reconciling the two bills, has reignited an old debate: how to involve multiple agencies in running the deposit insurance system without usurping the FDIC's independence.

It even has some arguing that the OTS should not be replaced at all, and that the FDIC should be returned to its traditional three-member structure.

"It would be perfectly reasonable to consider a leaner FDIC board," said Randall Kroszner, a former Fed governor and now a University of Chicago professor. "That option should at least be on the table."

The issue could be addressed as early as Tuesday, when the conferees are scheduled to meet to discuss, among other things, the dissolution of the OTS.

But the impact of the decision could stretch for years. If the Fed is tapped for the seat, some observers said it would undermine the FDIC's independence and undercut the agency's chairman.

Others counter that adding a Fed representative makes more sense than the director of the new agency, which is meant to target consumer issues, not safety and soundness regulations.

Conferees essentially have three options. They could opt for the Senate language, which is currently being used as the base text of the final bill, or lawmakers could adopt the House's version. Conferees also could compromise by returning the FDIC to a three-member board. Key lawmakers have yet to weigh in on the issue.

The FDIC's board was expanded to five members under the 1989 law establishing reforms spurred by the savings and loan crisis.

Before then, three members — the FDIC chairman, another independent director and the comptroller of the currency — presided over the agency's operations.

But the 1989 law transferred thrift oversight to the newly created OTS and added its director to the board. Another position, the FDIC vice chairman, was created to ensure the agency maintained a majority on its own board.

Richard Carnell, a Fed attorney in the 1980s who later worked in the Clinton Treasury Department, said adding the Fed was also discussed, but the FDIC opposed the idea. "The Fed has been viewed by other agencies as grabby and turfy and very good at it," said Carnell, now a law professor at Fordham University. "That was a factor with the FDIC."

Kenneth Guenther, the former head of the Independent Community Bankers of America, said the FDIC should return to a three-member board. He argued that adding either the Fed or a consumer bureau, which is likely to be housed within the central bank, would cripple the FDIC's independence.

Guenther noted that the Treasury Department, which houses the independent OCC, already has a voice on the FDIC board through the comptroller. Allowing both the Fed and Treasury to have a say in the agency would effectively overshadow it, he said.

"If you put the Fed on the board in any form — be it the Fed chairman in one bill or the head of the consumer protection agency in another, you have both the Fed and the Treasury on the board," Guenther said. "I don't think their first thoughts would be about building and strengthening the deposit insurance system. It would be a terrible mistake."

Many said the Fed chairman would likely delegate his place on the board to a central bank governor.

A governor "would be the logical person to be there," said Nicholas Ketcha Jr., a managing director at the bank consulting firm FinPro and a former director of supervision at the FDIC. "I can't see Alan Greenspan or Ben Bernanke there. If it was Greenspan in his heyday — when the Fed was the 800-pound gorilla — that could cause an issue. … There was so much deference given to him at that point."

Still, Ketcha and others said they favored a role for the Fed over seating the consumer regulator on the board because the central bank is more focused on bank supervisory issues.

"Someone from the Fed has a broader picture of the industry," Ketcha said. "If it's the head of the consumer protection agency … that person would be too singularly focused."

Kroszner agreed it would not make sense to add the consumer regulator to the board.

"The FDIC is a bank regulator and a deposit insurer, so there would be regulatory expertise that could come from the Federal Reserve," he said. "It's not clear what role the consumer regulator would have on the board if the FDIC does not have power over consumer protection."

But others said that in the wake of the financial crisis, consumer and safety and soundness issues are more intertwined. Giving the bureau a spot on the board would let it play a role in overlapping issues.

"Looking where the administration is coming from, and maybe where the Democrats on the Hill are coming from, my sense is the consumer agency would probably be the appropriate person," said Ron Glancz, a partner at Venable and a former FDIC and OTS attorney. "That's not to say my industry would go for that."

But Carnell recommended returning the board to a simpler composition.

"The best approach would be to go back to a three-member board with the comptroller and two independent members," he said.

He said one drawback of the five-person board is the complexity facing a new administration when trying to fill positions at the helm of the OCC or OTS. Under current law, the board cannot have more than three members from either political party.

"Where you had two agencies" besides the FDIC "represented on the board, the party stuff could get awkward when you had a change of administration," Carnell said. "It might actually constrain who you could name as comptroller or OTS director, depending on what the party composition of the FDIC board members was."