

FDIC Board Math Presents Problems for Agency Picks

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By [Joe Adler](#)

WASHINGTON — As the Obama administration sets about filling key vacancies among the federal banking regulators and finding a director for the new consumer protection agency, an old math problem at the Federal Deposit Insurance Corp. — with new wrinkles — is once again rearing its head.

Under existing law, the agency's five-person board can only have three members of the same political party, causing consternation to several past administrations. With the board's sole Republican, FDIC Chairman Sheila Bair, due to depart next year, that requirement alone is poised to give the White House a dilemma as it chooses her successor and a comptroller of the currency.

But the problem was made trickier by the Dodd-Frank regulatory reform law, which added the Consumer Financial Protection Bureau's director to the board, among other changes. "It's an unusually complex time" for the composition of the FDIC board, said Eugene Ludwig, a former comptroller of the currency and now the chief executive of Promontory Financial Group. "It is unique because you have a new agency that's involved."

Though events may not come to a head until next summer, the complicated FDIC board math is probably already influencing who the administration will pick to head the CFPB and to be the next comptroller.

The FDIC board currently has five members: the agency's chairman, the comptroller of the currency, the director of the Office of Thrift Supervision, and two independent directors. By law, one board member must have state regulatory experience.

But the Dodd-Frank law abolished the OTS and gave its FDIC seat to the CFPB as of July 2011. A month before then, Bair's term as chairman expires. She has said she does not want to be reappointed and expects to leave around that time. Meanwhile, the term of Tom Curry, an FDIC director who is a registered independent, already expired in January.

With the comptroller spot vacant and a director of the CFPB still unnamed, that would leave Democrat Martin Gruenberg, the FDIC's vice chairman, as the sole board member with a term that does not expire next year (His term is up in 2012.)

"Everything gets thrown up in the air around that time," said Phillip Swagel, a former Treasury official under President Bush and now a professor at the McDonough School of Business at Georgetown University.

At issue is precisely what the administration wants to do with Gruenberg. As long as he is in the vice chairman slot, the White House could appoint Democrats to at most two of three key posts: FDIC chairmanship, comptroller and CFPB director.

Also, if Curry leaves, it must appoint an additional Republican or independent member, as well as making sure one board member has experience as a state regulator (Curry was a former commissioner of banks in Massachusetts.)

"It has been a Rubik's Cube ever since it was enacted in 1989," Richard Carnell, a former assistant Treasury secretary of financial institutions and now a Fordham University law professor, said of changes made in the board's structure after the savings and loan crisis. "It really makes things complicated."

The simplest solution would be to nominate Gruenberg as chairman of the FDIC or as one of the other agency heads, observers said. In the past, board members have been given jobs at other agencies represented on the board, in part, so as not to disturb the mix of party affiliations. Most recently, President Bush nominated John Reich, a fellow Republican, to head the OTS in 2005, after Reich had spent four years as a director at the FDIC. "A key thing is: What does Marty want and how does the administration feel about him?" said Bert Ely, an independent consultant based in Alexandria, Va. "I've always thought he was a logical choice for the bureau."

Though Gruenberg has extensive consumer protection experience, it is unclear how fast the administration wants to move on the CFPB appointment. President Obama has named Elizabeth Warren, a Harvard law professor who came up with the idea for a consumer agency, as the top administration official in charge of setting up the new agency but sidestepped nominating her to be its director.

"A lot of this revolves around Warren, and what's going to happen there," said Ely. "That's why we may see the board in limbo for a year or more."

Observers said installing Gruenberg as FDIC chairman would be a straightforward way for the Obama administration to ensure that Democrats lead all three agencies represented on the board.

"The traditional model is the comptroller of the currency, the consumer protection bureau and the chairman would be of the chairman's party, and the vice chairman and the independent director would be of the other party," said William Longbrake, a former FDIC official and vice chairman at Washington Mutual Inc., who is now an executive in residence at the University of Maryland. "That would be the standard route. You have Marty as vice chair. They could get to that by moving Marty up to chair and the vice chair position becomes open for a Republican appointee."

The other names most often cited as potential directors are Democrats. In addition to Warren, the Treasury Department's current assistant secretary for financial institutions, Michael Barr, is mentioned as a possible comptroller or director of the new consumer bureau. Another prospective comptroller, New York bank superintendent Richard Neiman, is also a Democrat.

"Obviously, they want to have the head of the CFPB as a Democrat. My guess is, they would want to have the comptroller as a Democrat too. That gives them two," said Nicholas Ketcha Jr., a former FDIC supervision director

and now a managing director at the bank consulting firm FinPro. "The question is: Do they move Marty over to one of the other agencies? That gives them some room to put a Republican or an independent in the vice chairman's spot.

Yet another option would be to nominate Joseph Smith, the North Carolina bank commissioner, who has been mentioned as a possible comptroller and would, like Neiman, also satisfy the requirement for a board member to have state regulatory experience.

Observers said Republican John Walsh, whom the Obama administration selected to lead the OCC on an interim basis, may be a wild card. To achieve more flexibility to appoint Democrats to the board, keeping Walsh on could be an option.

Some said the fact that multiple board seats are in play means the administration can approach appointments somewhat comprehensively.

"All of these positions turn over literally at the same time or within close proximity to each other, so it actually could be managed collectively," said Longbrake.