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Ex-Regulators Get Set to Lobby on New Financial Rules

By ERIC LICHTBLAU - July 27, 2010

WASHINGTON — As the battle over toughened financial restrictions moves to a new front, the regulatory agencies that will create hundreds of new rules for the nation's banks will face a lobbying blitz from companies intent on softening the blow. And many of the lobbyists the regulators hear from will be their former colleagues.

Nearly 150 lobbyists registered since last year used to work in the executive branch at financial agencies, from lawyers for the Securities and Exchange Commission to Federal Reserve bankers, according to data analyzed for The New York Times by the Center for Responsive Politics, a nonpartisan research group.

In addition, dozens of former lawyers for the government, who are not registered as lobbyists, are now scouring the financial regulations on behalf of corporate clients.

"The headhunters are out in force" to recruit former government regulators as lawyers and lobbyists, said Lawrence Kaplan, who was a senior lawyer at the government's Office of Thrift Supervision and now works on banking regulation at the Washington law firm Paul Hastings.

"I get calls practically every day," he said. "You want people who know what they're doing, and the government background builds your bona fides. It's a credential that you flaunt."

Lobbying and law firms here have always turned to former regulators to navigate the bureaucracies of Washington. But the financial regulations passed by Congress and signed into law by President Obama have left most of the real decision-making to the S.E.C. and other agencies, making these agencies more powerful than ever. On a scale that analysts say they have never seen, government regulatory agencies will spend the coming years enacting rules on everything from the definition of a "systemically important" mega-bank to limits on debit card fees.

Federal agencies will decide the details of at least 243 financial rules and conduct 67 studies, according to an assessment by the Davis Polk law firm.

The S.E.C. alone is responsible for developing 95 rules on topics like the trading of derivatives, standards for credit rating agencies and disclosure of executive bonuses. The Commodity Futures Trading Commission must develop 61 rules, the Federal Reserve has 54, and two agencies just created by Congress — the Consumer Financial Protection Bureau and the Financial Stability Oversight Council — have 80 rules between them.

Credit card companies will look to maintain higher fees on debit cards. Derivatives investors will seek to define themselves as “end users” of a particular product who should be exempted from some restrictions. Niche industries like payday lenders and check-cashing services will push for less burdensome federal regulation. And in many cases, the industries will rely on former regulators to make their cases to the federal agencies.

Many directives in the Congressional legislation are written so broadly that the agencies have wide discretion in drafting rules.

“It’s 2,300 pages that affect every facet of the financial services industry,” said Justin Daly, a former counsel at the S.E.C. “If you look at a lot of the important provisions, Congress delegates authority to the agencies to make the really tough determinations. There’s no question that this bill empowers regulators in a way that we’ve never seen before.”

Mr. Daly will now be working those issues from the other side — as a lobbyist. He left the S.E.C. in February and joined the lobbying firm of Ogilvy Government Relations. Although Mr. Daly was a senior lawyer at the S.E.C., he was not senior enough to fall under a one-year “cooling off” period that bans lobbying by former employees.

Last week, Ogilvy, fourth among lobbying shops last year with \$21.7 million in revenue, brought in another former government regulator to work with Mr. Daly — De’Ana Dow, a lawyer at the Commodity Futures Trading Commission for 22 years until 2002. In announcing Ms. Dow’s hiring, Ogilvy stressed the government résumés that she and Mr. Daly brought to the job and said the pair had “the experience and expertise to provide tremendous value to our clients as the regulatory agencies implement the legislation.”

According to the analysis done by the Center for Responsive Politics, nearly 500 officials have gone through the “revolving door” between government financial agencies and the private sector. Of that group, 148 former regulatory officials were registered to lobby the government last year or this year, representing virtually every regulatory agency.

Executives at some leading law firms and lobbying shops said in interviews that they began increasing their hiring of former regulators in 2008, soon after the economic crisis hit, in anticipation of the current push for tougher regulations.

These past associations can be influential. Government officials and lobbyists agree that former agency officials have a much easier time getting phone calls or e-mail messages returned from their old colleagues, and that access often extends to greater credibility in arguing their clients’ positions.

One corporate lobbyist who worked as a regulator, asked whether he believed he had an inside edge in lobbying his ex-colleagues, said: “The answer is yes, it does. If it didn’t, I wouldn’t be able to justify getting out of bed in the morning and charging the outrageous fees that we charge our clients, which they willingly pay.”

The lobbyist, who spoke on condition of anonymity because of concerns about alienating government officials, added that “you have to work at an agency to understand the culture and the pressure points, and it helps to know the senior staff.”

But that access and familiarity has proved problematic at times for regulators, particularly at the S.E.C. The issue has received so much attention that the financial legislation approved by Congress directs the Government Accountability Office to do a review of the revolving-door problem at the S.E.C.

In addition, the inspector general for the agency has identified a number of recent investigations in which ex-agency lawyers appeared to have undue influence with their former colleagues in matters involving current and former major firms like JPMorgan Chase, Bear Stearns and the Stanford Financial Group, which was implicated in a multimillion-dollar Ponzi scheme.

In one case, an S.E.C. official, asked about the agency's lenient treatment of an equity firm suspected of fraudulent practices, said he had probably given the company "the benefit of the doubt" because it was represented by a former S.E.C. official.

Generally, most senior officials at federal regulatory agencies are banned from lobbying their former agencies for a year after leaving the government. The Obama administration has gone further in imposing restrictions on its political appointees once they leave the government.

Craig Holman, a government affairs lobbyist at Public Citizen, a watchdog group that has studied the revolving door, said he was hopeful that the new restrictions might help prevent corporate lobbyists "from capturing the agencies that regulate them."

For their part, the regulatory agencies say they are girding for the intense interest their deliberations will draw.

"We believe that hearing from all interested parties leads to better rule-making," said John Heine, a spokesman for the S.E.C. To ensure transparency, he said the agency would take public comments even before its proposals were issued, and anyone wanting to meet with staff members would be asked to submit a written agenda that would become part of the public record.