Regulator in Chief

The unchecked, unelected, unaccountable Elizabeth Warren. BY FRED BARNES

The Consumer Financial Protection Bureau (CFPB) is forgotten but not gone. It's housed, quietly and temporarily, in the Treasury Department as it prepares to become an official, stand-alone federal agency on July 21. The CFPB is hiring. It already has an acting director, an enforcement chief, and a growing staff. They're eager to come to the aid of borrowers and credit card holders.

Despite its angelic image, the CFPB won't be a nice little regulatory agency. It will be powerful, hard-nosed, and unaccountable. It will decide its own budget without the obligation of asking Congress for money. It will have no governing board, only a director whose rulings can't be vetoed. It will be almost impossible to challenge those rulings successfully in court.


Elizabeth Warren

The bureau, created by the Dodd-Frank legislation that revamped regulation of the financial industry last year, is a favorite of President Obama. And, like his health care law, it perfectly reflects his view of how government should work: It gives enormous authority to unelected bureaucrats in Washington. Administration officials were reported to have high-fived when it became clear the bureau would be part of Dodd-Frank.

Republican Spencer Bachus of Alabama, chairman of the House Financial Services Committee and a sharp critic, says the bureau won't be like an efficient private sector company (his examples are Costco, Amazon, and Southwest Airlines) but rather like Amtrak, the government-run passenger rail line. "If you like TSA at the airport," he adds, "you'll love these guys."

The new agency was the brainchild of Elizabeth Warren, a Harvard law professor who proposed it in an influential article in 2007. She argued that consumers are protected when they buy "tangible consumer goods" like toasters, but when they purchase "credit products"—loans of various types—they're at the mercy of often-unscrupulous lenders.

Her model for the CFPB, Warren wrote, is the Consumer Product Safety Commission. But there are critical differences between the two. The commission is a traditional regulatory agency funded by Congress and thus accountable to Congress. The bureau is authorized to receive up to 10 percent of the operating budget of the Federal Reserve (or as much as $500 million), which raises its own funds. It will be loosely part of the Fed, but not subject to the Fed's authority.

Another important difference is what the bureau is empowered to target. For decades, "unfair or deceptive acts or practices" have been subject to federal jurisdiction. But for the CFPB, the word "abusive" was added. This means it can go after financial products that aren't deceptive and the terms of which are fully understood by borrowers. And the bureau will define what is abusive and what isn't.

When the CFPB began its planning stage last fall, the White House was expected to nominate Warren as director. But she is a controversial figure on Capitol Hill, loved by Democrats, but feared as a regulatory zealot by Republicans. Rather than face a tough confirmation struggle, the president made her a presidential assistant, a kind of "director without portfolio," as one journalist put it.

For the bureau to be fully empowered in July, it must be headed by a Senate-confirmed director. This poses a problem for Obama. Warren is probably unconfirmable, given Republican opposition. That leaves the president with two choices: either give Warren a recess appointment through the end of 2012 or nominate someone else.

A recess appointment carries its own risks. "It would be dangerous to the American economy if Elizabeth Warren were put in that job by a recess appointment, thwarting the will of Congress," Senator Richard Shelby of Alabama told me. As ranking Republican on the Senate Banking Committee last year, he strongly opposed the CFPB. She would be "accountable to no one," Shelby says.

But Warren isn't the problem. Any director of the bureau would be unaccountable. The real problem is the breadth of power that Dodd-Frank gave the CFPB. Senator Bob Corker of Tennessee sought, unsuccessfully, to reduce its reach in negotiations with then-banking committee chairman Chris Dodd of Connecticut.

"Its powers are very, very vast," Corker says. "Who in the world would consider it appropriate to have one person appointed—one person!—to set the rules for the entire financial industry. It's a tremendous overreach. It's incredible to think about."

Republicans have offered several alternatives to the CFPB. Corker favored beefing up the power of existing regulators to crack down on lenders. Bachus wants to turn the bureau into a commission with a board and funding by Congress.

Neither is likely to pass this year. But House Republicans took a swipe at the CFPB by limiting what it can spend to $80 million—Obama wanted $134 million—as it gears up for its July launch. So while the media have largely ignored the new agency, at least a few Republicans haven't forgotten how much they dislike it. ♦

DAVID SHANKBONE

Fred Barnes is executive editor of THE WEEKLY STANDARD.