

Treasury official meets more skepticism than support (July 24, 2009)

Deputy Secretary Neal Wolin makes case for Consumer Financial Protection Agency, but bankers balk at methods

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Blaming much of the current financial crisis on "the failure of our consumer protection regime," Treasury Deputy Secretary Neal Wolin addressed the ABA Leadership Meeting and asked for the industry's support for the Obama Administration's proposed Consumer Financial Protection Agency and related legislative steps.

Wolin gutted current federal banking regulators' consumer protection efforts.

On one hand, he blamed the structure of the current approach.

"All of the federal financial regulators have higher priorities than protecting customers," said Wolin. "There are wide gaps, allowing nonbanks to escape federal supervision almost entirely. The current approach invites regulatory arbitrage."

Wolin also blamed performance of the agencies, using subprime lending as a case study.

"It took the federal banking agencies until June 2007 to reach consensus on supervisory guidance to impose even general standards on the sale and underwriting of subprime mortgages," Wolin charged. He said that was two years after "evidence of declining underwriting standards emerged in a regulator's public survey of loan officers." And he said that it took a year longer before the federal agencies devised model subprime disclosures.

Wolin said state regulators took more time to adopt similar guidance for independent mortgage companies.

Acknowledging ABA's opposition to the overall CFPB proposal, Wolin said he believed that the concept actually favors both traditional banks and consumers.

Competitive issues framed one of Wolin's arguments. He said that banks with "straightforward credit products were forced to compete with less scrupulous providers outside the banking system. Banks that were not willing to lower their standards lost market share and revenue."

Wolin said that the Administration's proposal, by pulling all financial firms, including banks and nonbanks, under CFPB would bring banking a level playing field.

Addressing banker objections to the proposal, Wolin said the point raised by ABA and others that safety and soundness and consumer protection regulation should not be separated "simply does not hold water."

Wolin said that the Obama proposal would require CFPB and safety-and-soundness examiners to confer through exchanges of exam reports while they were still in the draft stage.

"I'm hard pressed to think of a realistic example of a true conflict between the consumer protection agency and the prudential [safety and soundness] regulators," said Wolin. "But for the rare case in which such a conflict might arise, we can put in place a framework that ensures their swift resolution."

Wolin also addressed the criticism that the Administration's proposal would stifle innovation in financial services.

"If that means that the agency will make it harder to sell consumers products that they don't understand and cannot afford, that's correct," said Wolin.

However, Wolin also said:

"Our proposed legislation explicitly charges the CFPB with preventing abusive and unfair practices and, at the same time, promoting efficiency, innovation, and consumer access to financial services. A statutory mandate to weigh these considerations will help ensure that the CFPB's regulations are balanced," Wolin said.

Questions and comments from bankers after the speech did not indicate that Wolin had succeeded in selling the bankers on the CFPB plan.

One told the Treasury official that all bankers at the meeting supported the goal of the Administration plan, "to put the consumer front and center," but resisted the mechanism chosen to achieve that aim. Reiterating the point made in the Administration's own regulatory reform white paper, that 94% of the high-cost mortgages made were not made by traditional banking institutions, the banker questioned the need for steps the CFPB proposal takes regarding traditional, already regulated financial institutions.

“As the doctors would say, ‘First do no harm’,” the banker said. “We believe there are answers out there, we just have many questions about the proposal.”

Wolin said he agreed that it wasn’t productive “to break something that is working,” but reiterated his point that the Administration believes the existing system is not working. He cited mortgage documentation as an example. The Federal Reserve designs some documents, the Department of Housing and Urban Development does others, and the two don’t share a common language or approach.

“That’s the kind of example we think needs to be cleaned up,” said Wolin. Bringing all consumer protection under one regulator would accomplish that, he said.

An Illinois banker complained that predatory lenders tend to be in business one day, gone and untraceable the next. They are difficult to find and difficult to catch, she said. Her institution, she said, had watched them operate in the same markets it worked in, and knew what kind of challenge they posed to regulators.

“You’re not going to be able to have a big enough agency to do that,” said the banker, “so you are going to come back to the banks because that’s a list you can find.” She said the new regulator would spend too much time in banks and not enough time pursuing genuine bad actors among nonbanks. The room erupted in applause.

Wolin, who reflected that he came from Chicago as did the banker, said the Administration was committed to having the new regulator go after such bad actors.

Read Wolin’s speech.

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