AMERICAN BANKER

Regulators Fight Back Against Exam Appeals Bill

By Kevin Wack
February 1, 2012

WASHINGTON — Bank regulators raised significant concerns Wednesday with a House bill that would set up an independent appeals process for banks that receive a low exam rating and provide new guidelines for agencies regarding the treatment of commercial loans.

The agencies, which have until now spoken out only privately about the bill, are now officially pitted against the banking trade groups and a bipartisan group of lawmakers.

"The bill would, in certain instances, tie the hands of regulators when they believe a bank's risk profile requires more capital," Jennifer Kelly, the Office of the Comptroller of the Currency's senior deputy comptroller for midsize and community bank supervision, said in testimony to the House subcommittee on financial institutions and consumer credit.

The bill, which is being sponsored by Republican Rep. Shelley Moore Capito and Democratic Rep. Carolyn Maloney, has two main parts.

It would establish a series of examination standards that would give banks more time to try to deal with commercial loans that are presenting problems.

The measure would also set up a new ombudsman's office at the Federal Financial Institutions Examination Council, the interagency group that establishes uniform standards for bank exams. This process would be in addition to an existing appeals process, under which banks can appeal findings to an ombudsman within the agency that conducted the exam.

The banking agencies presented a unified front Wednesday, suggesting the bill raised safety and soundness concerns, including allowing a bank's condition to deteriorate while it pursued an appeal of an exam rating.

Sandra Thompson, director of the FDIC's division of risk management supervision, said that the new ombudsman's office would have authority, but no responsibility, for the condition of the bank if it failed.

"A few months' delay in implementing corrective measures, particularly in times of precipitous economic decline, can mean the difference between failure and survival for a troubled bank," she said. "More fundamentally, we believe the authority granted to this office would compromise the independence of the banking agencies."

At times, Wednesday's hearing resembled a ritual flogging of the regulators, who have frequently been called up to Capitol Hill to hear lawmakers and bankers complain about a sharp disconnect between the words of agency officials in Washington and the actions of field examiners.

"I kind of wonder if we're a little bit in an alternative universe here," Capito said, referring to the difference between the agencies' testimony and the assertions of bankers that the regulators' standards are tightening and inconsistent. "Is there a big disconnect here?"

Rep. Lynn Westmoreland, a Georgia Republican, whose home state has been hit particularly hard by bank failures, responded to the argument that Congress should not meddle with exam standards by asking the regulators: "So do you think we can screw up this more than ya'll have?"

Kelly responded that the OCC is constantly talking to banks and soliciting their views on inconsistencies in exams. "So we are continuing to try to work these issues very aggressively," she said.

Later, upon learning that the FDIC bars retaliation against banks that complain about their exam results, Westmoreland resorted to a colorful analogy.

"That's like your dog having its teeth into your neighbor's leg, and you telling the neighbor, I don't allow it to bite," he said.

Rep. Melvin Watt, D-N.C., was one of the few committee members to speak out against the bill, but even he had complaints about how exams are being conducted.

"I don't think we can micro-manage examinations in this committee, and when we try to do that, I think we do ourselves a disservice," Watt said. "Having said that, there is a lot of arbitrariness going on."

Both the American Bankers Association and the Independent Community Bankers of America testified in favor of the bill.

"This bill will go a long way toward improving the oppressive examination environment, a priority concern of community bankers and a barrier to economic recovery, by creating a workable appeals process and consistent, commonsense standards for classifying loans," said Noah Wilcox, president and CEO of Grand Rapids State Bank in Minnesota, on behalf of the ICBA.

Albert Kelly, president and CEO of SpiritBank in Oklahoma, said that overly conservative examinations translate into less credit, which means slower business growth and less job creation.

"There is no question that the regulatory pendulum has swung too far in reaction to the financial crisis," said Kelly, who is also chairman of the ABA.

Eugene Ludwig, a former comptroller who is now the chief executive officer of bank consultant Promontory Financial Group, was also broadly supportive of the idea of an independent appeals process for banks, or what he described as a "super-ombudsman."

"There are no divorces in banking," Ludwig said. "Without a polite, professional relationship marked by mutual respect, communication can deteriorate in a way that benefits no one."