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COVER STORY

Regulators Fight Back Against Exam Appeals Bill

By Kevin Wake

WASHINGTON – Bank regulators raised 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 on 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.

It also would set up an 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 **Federal Deposit Insurance Corp.’s** division of risk management supervision, said the ombudsman’s office would have authority, but no responsibility, for the condition of a failed bank: “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. 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 grouse about a 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,”



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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 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 y’all have?”

Kelly replied that the OCC constantly talks to banks and solicits their views on inconsistencies in exams. “So we are continuing to try to work these issues very aggressively,” she said.

Later, on learning the FDIC bars retaliation against banks that complain about their exam results, Westmoreland remarked, "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."

Melvin Watt, D-N.C., was one of the few committee members to speak out against the bill, but even he complained about how exams are being conducted. "I don't think we can micromanage examinations in this committee, and when we try to do that, I think we do ourselves a disservice," he said. "Having said that, there is a lot of arbitrariness going on."

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," Noah Wilcox, president and CEO of Grand Rapids State Bank in Minnesota, said on behalf of the ICBA.

Albert Kelly, president and CEO of SpiritBank in Oklahoma, said 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 CEO of the bank consultant Promontory Financial Group, broadly supported the idea of an independent appeals process for banks. "There are no divorces in banking," Ludwig said in written testimony. "Without a polite, professional relationship marked by mutual respect, communication can deteriorate in a way that benefits no one."

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