

NATIONAL TREASURY EMPLOYEES UNION

Perspectives on Regulatory Restructuring of Federal Financial Regulatory Agencies

Structure and Authority of Federal Financial Regulatory Agencies

While reforms and improvements are necessary to address shortcomings in the current regulatory structure, employees of the federal financial agencies represented by the National Treasury Employees Union – the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration and the Securities and Exchange Commission – do not see the need for an overall merger or consolidation of the functions of these major agencies. (Merger of the smaller agencies such as OTS or CFTC into one of the major agencies would be a different matter). Such a move would be extremely disruptive, not only to employees but to the accomplishment of their missions, as was demonstrated by the problems created after the Department of Homeland Security was established.

We therefore recommend that the OCC, FDIC, NCUA and SEC retain their current regulatory missions and roles, at least with respect to examination of prudential risk, compliance and resolution of failed institutions. Many of the failures by these agencies to identify problems in the financial system in the past several years are attributable not to any inherent flaws in the structure of these agencies, but were the result of what we have seen as a lack of commitment by agency leaders to the regulatory mission of their agency during this period. Simply put, examiners and attorneys were not given the resources and tools necessary to properly supervise the financial system or pursue enforcement matters because their leaders did not seem to believe that such supervision and enforcement were necessary or important.

There are, however, a number of steps that we would recommend to enhance the ability of these agencies to meet their respective missions, and to address gaps in the current supervision of the financial system:

Systemic Risk: We recognize the need to significantly improve the regulators' ability to identify and address systemic risks to the financial system. We suggest that the most viable option would be to substantially broaden the scope and authority of the Federal Financial Institutions Examination Council (FFIEC). This could be a better alternative to adding to the responsibilities of the Federal Reserve Board, which could distract the Fed from its important role in establishing monetary policy. The FDIC, OCC, NCUA, OTS and the Federal Reserve are all current members of the FFIEC, which was established under FIRREA to prescribe uniform standards, principles and report forms for the federal examination of financial institutions by the member agencies. We recommend expanding the authority of the FFIEC to include the ability to conduct joint examinations to identify and address systemic risk, expanding the membership of the FFIEC to include the SEC and CFTC for systemic risk determinations, and providing permanent staff to assist the FFIEC in performing these functions.

Expanded Authority for the SEC: We recommend that the SEC receive increased authority over unregulated investment instruments and entities, including explicit statutory authority to regulate hedge fund advisers as investment advisers and to require hedge funds to disclose the contents of their portfolios, leverage amounts and counterparties. We also recommend that the SEC be given criminal enforcement and investigative authority.

Agency Funding and Staffing: Although each of these agencies collects various forms of fees or assessment from the institutions it regulates, they are currently funded in different ways. On the one hand, the FDIC, OCC and NCUA have control over the funds they collect, and independence in setting their budget and staffing levels. However, fees collected by the SEC go to the General Treasury, and this agency is funded and staffed through appropriations. We recommend consistent funding mechanism for these agencies which ensures their independence in establishing their budgets and staffing needs from the fees and assessments that they collect. It is critical that each agency have the necessary staff to conduct effective examinations and otherwise fulfill their respective missions. Significant increases in staffing are necessary in several of these agencies, especially in the SEC examination program, which is only able to conduct examinations of a small fraction of regulated entities each year due to understaffing.

We also note that each of these agencies has been given authority to determine employee compensation and benefits outside of the General Schedule, and a responsibility under FIRREA to seek to maintain comparability with respect to compensation and benefits. However, while NTEU has had collective bargaining over pay and benefits for employees of the FDIC, SEC and NCUA, we have been precluded from collective bargaining with the OCC based on court cases interpreting its enabling statute. We therefore recommend uniformity here as well, to make each agency's exercise of authority over compensation and benefits subject to collective bargaining, which will promote accountability and ensure transparency, credibility and fairness with respect to these matters, especially agency pay-for-performance systems.

To the extent that the Congress decides to consolidate or merge any of the financial regulatory agencies, such as by folding the CFTC into SEC, or the OTS into OCC, we would also urge inclusion of provisions in the legislation to protect the employment status of current employees and maintenance of their collective bargaining rights. We would also urge the Congress to extend collective bargaining rights to employees of the Federal Reserve System, who are currently not covered by either the Federal Sector Labor-Management Relations Act or the National Labor Relations Act.

Charter Changes and "Regulator Shopping": In some cases, it has been observed that financial institutions may have an incentive to change charters, or their membership status in the Federal Reserve, simply to change their regulator. While we see no need to make fundamental changes to the dual banking system of federal and state charters, there

are some changes to the regulatory structure that should be considered. First, we should remove any incentive for a regulator to try to “attract” an institution to come within its jurisdiction through more lenient regulation or supervision (a “race to the bottom”). One way to remove such an incentive would be to provide a single, uniform funding source for all these agencies, so that there would be no incentive to attempt to entice an institution to change their charter in order to capture its assessments or fees. We also believe that the Congress should consider giving the FDIC authority to examine all state-chartered financial institutions, regardless of their Federal Reserve membership status, or to strengthen its “secondary” examination authority. This would not only provide greater consistency in examination and supervision, but would remove any incentive for institutions to change their regulator simply by changing their membership status, while at the same time providing greater protection for the insurance fund.