



Republicans take issue with big bank living wills

by Ronald Orol
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Top Republicans at three U.S. federal agencies on Wednesday took issue with the way bank regulators have been handling so-called living wills, which are the plans that large financial institutions must set up as guides to explain how they would dismantle themselves if they failed.

"It is in mind very debatable about whether agencies are handling that well," FDIC director Jeremiah Norton told a gathering organized by George Mason University and the Cato Institute. At issue is Title 1 of the Dodd-Frank Act, written in the wake of the financial crisis, which requires the wills, also known as resolution plans.

Lawmakers and regulators initially sought the wills as part of an effort to force financial institutions to structure themselves in a way that would limit the kind of collateral damage the global markets felt after Lehman Bros. filed for Chapter 11 bankruptcy in 2008.

Large financial institutions are required to submit their plans to the Federal Reserve and Federal Deposit Insurance Corp. So far, the biggest banks have submitted three sets of wills, including public and confidential sections. Regulators are expected to scrutinize the private submissions more heavily.

Norton suggested regulators and banks have spent a disproportionate amount of energy working on a related section of the statute -- known as Title 2 that sets up a government-funded system, known as the Orderly Liquidation Authority, or OLA, to resolve a failing bank -- and not enough time focusing on making sure that banks submit sufficient living wills, which is in Title 1.

"We're not getting to the place at the agencies where Title 1 is receiving the same amount of focus as Title 2 is receiving. We're concerned the conversation is skipping Part 1 of Dodd-Frank and going to Part 2," he said. "I think that achieving a state where bankruptcy works should be the goal."

While bank regulators have access to the living wills, securities and futures regulators don't appear to. Daniel Gallagher, a Republican commissioner at the Securities and Exchange Commission said it was a big surprise to learn the SEC can't review them.

"One of the surprises is that the SEC doesn't have access to the living wills for the institutions we regulate," Gallagher said.

Scott O'Malia, a Republican Commissioner at the Commodity Futures Trading Commission, told *The Deal* he believed the same to be true of the CFTC. "I have not seen any documents and nobody has shared that info with us," he said. "We had a bunch of contracts that had to be adjusted to include provisions related to Title 2 so we'd like to know what we signed up the entire industry for."

The concerns among Republicans came after Tom Hoenig, the FDIC vice chairman, last month raised concerns that some big banks haven't received any formal feedback from regulators even though this is the third year they submitted the plans.

Hoenig suggested at the time that the plans need to credibly explain how a big bank with international operations would go through the traditional bankruptcy process without disrupting the global financial system. He said that if the plan can't do that then regulators have an obligation to identify any asset at the big bank that appears to be at odds with its orderly disassembly in a crisis and require them to divest it.