

Banking Law News

Progressives Fret Over Biden's Pick to Oversee National Banks

By Evan Weinberger and Andrew Ramonas

Feb. 5, 2021, 12:08 PM

- OCC pick has fintech ties, tangled with progressives on Dodd-Frank
 - Industry expects tough oversight from all Biden appointees
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President Biden's choice of financial regulators is proving to be a mixed bag for consumer advocates and progressives eager for tougher oversight of Wall Street after the Trump Administration.

Michael Barr, Biden's likely choice for Comptroller of the Currency, clashed with progressives as a key architect of the 2010 Dodd-Frank Act and more recently served as adviser to cryptocurrency firm Ripple Labs Inc. and peer-to-peer lender LendingClub. Both companies have run afoul of regulators.

Meanwhile, advocates of investors and consumers praised Biden's nominations of Gary Gensler to lead the Securities and Exchange Commission and Rohit Chopra to lead the Consumer Financial Protection Bureau. If confirmed, Gensler and Chopra are expected to enlarge enforcement staffs and bring a more aggressive tone to the agencies that had been viewed as too close to industry under Trump.

"Barr is deeply invested in the Wall Street and Silicon Valley corporations he would regulate, which should disqualify him from the outset," Bree Carlson, the deputy director of advocacy group Progressive Action, said in a Jan. 21 statement following reports that Barr is the expected nominee.

Other progressives echo Carlson's view, concerned that that Barr, a former Treasury official, would take a light enforcement and supervision touch to national banks and fintechs overseen by the independent OCC.

But that view is not universal, with some of Barr's proponents highlighting his work to help underserved communities and ultimately championing Dodd-Frank and the creation of the Consumer Financial Protection Bureau.

Bartlett Naylor, Public Citizen's financial policy advocate, said he expects that Barr would "row in the same direction" as Biden's other regulators, despite some differences.

High Barr

Barr's critics have pointed to his recent advisory work with Ripple and Lending Club. The SEC in December sued Ripple, which runs the world's third-largest cryptocurrency, alleging the company sold more than \$1 billion of the virtual tokens without registering with the agency.

Barr advised both companies on how to get more people into the banking and financial system. He stopped serving on Ripple's advisory board in 2017 and Lending Club's advisory board in 2020.

But concerns remain that Barr's industry ties would influence the OCC's oversight of cryptocurrency companies and other non-traditional financial services companies, including the agency's recent push for national charters for fintech lenders. National licenses would allow fintech companies to avoid strict loan interest rate caps that many states have enacted.

"National charters for FinTech as a vehicle for high-cost loans avoiding state usury laws is a major consumer issue," Naylor said.

Barr battled with consumer activists and liberal lawmakers over the Volcker Rule and other aspects Dodd-Frank during his 2009-2010 tenure as assistant Treasury secretary for financial institutions. Critics say he worked to weaken the Volcker Rule, which sought to ban proprietary trading by Wall Street banks. The rule eventually included a number of exemptions.

Reps. Joyce Beatty (D-Ohio) and Jamaal Bowman (D-N.Y.) have urged Biden to nominate University of California Irvine law professor Mehrsa Baradaran for the OCC job, saying she's the best choice to take on "entrenched financial interests."

Baradaran, who has written extensively about closing the racial wealth gap and boosting Black home-ownership, would be "a chief banking regulator whose values are fully aligned with working people," Bowman and Beatty wrote in a Jan. 26 letter to Biden.

Unsung Hero

Concerns about Barr are unfair, according to Buzz Roberts, the president and CEO of the National Association of Affordable Housing Lenders.

Barr would likely to steer the OCC away from Trump-era Community Reinvestment Act changes that have been criticized for easing how banks are graded on their lending to low-income communities.

Barr also shares the Biden administration's views on tackling the Covid-19 pandemic, racial equity, and climate change, Roberts said.

Barr, currently dean of the University of Michigan's Ford School of Public Policy, has a long history of working on financial inclusion and consumer protection issues in academic, government, and private-sector roles, Roberts noted.

"It's possible that some folks may not be fully aware of Michael Barr's track record and his performance on behalf of underserved people and communities," Roberts said.

Sen. Elizabeth Warren (D-Mass.) in her 2014 book, "A Fighting Chance," referred to Barr as one of the "behind the scenes heroes" in getting Dodd-Frank passed and the CFPB created. The agency's first director, Richard Cordray, also has voiced support for Barr.

Balancing Act

Having Chopra, and to a lesser extent Gensler, on Biden's financial regulatory team could provide a counterbalance to Barr, said Joseph Lynyak, a Dorsey & Whitney LLP partner. If fintechs are granted national charters, the CFPB would likely monitor those firms for potential lending abuses though the bureau wouldn't be able to police the interest rates they set.

"It seems to me that the fight with Mr. Barr, who everyone agrees is an extremely smart individual, may be less in terms of what he wants to do than what his emphasis is going to be," Lynyak said.

Having a balance between progressives and slightly more moderate regulators could be an overall positive for Biden's financial regulatory team, said Erin Lockwood, a professor at U.C. Irvine's School of Social Sciences.

"You're sharpening your swords against other sharp swords," Lockwood said.

Lockwood said she doesn't know Baradaran, although she supports the UC Irvine professor for the comptroller's role.

The differences among Biden's regulators are unlikely to have a material impact on the new pressures Wall Street will face, said Allison Schoenthal, a partner at Goodwin Procter LLP.

"We're all expecting tougher regulation and enforcement, and if banks aren't preparing already, they should be," she said.

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