Comparing the Paulson Blueprint with the Geithner White Paper

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Introduction

As Congress begins writing legislation intended to reform the financial regulatory framework, lawmakers must contend with not only the administration's proposals, but also those from ideologically-based advocacy groups, consumer-based advocacy groups, and business interests. Taken together, these diverse and often conflicting recommendations can seem bewildering and may ultimately impede reform. In an effort to restore some clarity to this process, this note compares financial reform recommendations made by Treasury officials in the administrations of both George W. Bush and Barak Obama. Highlighting the main areas of agreement as well as the main areas of disagreement in these documents should help policy analysts and lawmakers frame their own policy options.

> ***"Secretary of the Treasury Paulson outlined much of what we plan to do, with some differences in some of the specifics, back in April 2008."***
>
> *-Rep. Barney Frank (D-MA), Chairman, House Financial Service Committee, August 28, 2009*
>
> http://www.npr.org/blogs/money/2009/08/podcast_rep_barney_frank_check.html

It is important to note at the outset that the Geithner Treasury's report, *Financial Regulatory Reform, A New Foundation: Rebuilding Financial Supervision and Regulation* (White Paper), is a single set of recommendations that acted as a framework for specific legislative proposals,[2] whereas the Paulson Treasury's *The Blueprint for a Modernized Financial Regulatory Structure* (Blueprint) is more conceptual in nature.[3] The Blueprint contains three sets of recommendations: the short term recommendations and intermediate term recommendations are offered as steps towards the end goal; a third set of recommendations called the long term optimal model.

[1] Gordon McDonald manages Pew's Financial Reform Project and would like to thank Task Force member Bob Steel and members of his former team at the Paulson Treasury for their assistance with this project.
[2] For a list of specific legislative proposal based on the White Paper, see: http://www.pewfr.org/page?id=0003
[3] Secretary Paulson commissioned a study of the U.S. financial regulatory structure in March 2007 to address concerns that the US regulatory system threatened the international competitiveness of our capital markets.

The Blueprint in particular contains a discussion of a number of different types of structural financial regulatory models, including functional regulation, consolidated regulation, and objectives-based regulation. Functional regulation, the current, dominant model in the US, is regulation by business activity and it is characterized by different regulatory agencies for different financial services.[4] Consolidated regulation, dominant in the UK, for example, describes a model when one single regulatory agency is responsible for all of the regulation for all financial institutions.

Objectives-based regulation, a third way of organizing financial regulation, is at the core of Blueprint's optimal model.[5] The Blueprint outlines three objectives that merit regulation: market stability regulation, prudential regulation, and consumer and investor protection regulation. Each objective is aligned with a federal regulator: a market stability regulator (the Federal Reserve (Fed)), a new prudential financial regulator, and a new business conduct regulator. The White Paper, in contrast, does not promote a single basic model – regulation by institution, function or objective -- as the ideal regulatory structure, but instead recommends a financial regulatory system that would still largely resemble the current functional model, with unique regulatory models for firms engaged in securities and futures transactions, depository institutions, and insurance firms.

Broadly speaking, key similarities between the reports include: recommendations that a single agency be created with responsibility for consumer protection; that the Fed be given a key role in monitoring and mitigating systemic risk; that the thrift charter be eliminated; that the Office of Thrift Supervision

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President Obama directed the Geithner Treasury to develop regulatory and supervisory reforms to address the causes of the financial crisis, as well as restore confidence in the financial system. Both are available on our website: www.pewfr.org/reform_resources_articles?type=Selected%20Works

[4] The Blueprint argues that our system is better characterized as an institutionally-based functional regulatory model. See Blueprint, pages 139-140 for a discussion.

[5] Australia and the Netherlands provide examples of regulation by objective, Spain is in the process of adopting this approach too. According to the recent G30 Report "The Structure of Financial Supervision: Approaches and Challenges in a Global Marketplace," this approach (which they discuss as the "Twin Peaks" approach) may be "the optimal means of ensuring that issues of transparency, market integrity and consumer protection receive sufficient priority." A related discussion is the difference between a rules-based regulatory approach and a principles-based regulatory approach. In a rules-based approach, as we largely have today in the US, the regulator prescribes in great detail exactly what firms can and cannot do. In the principles-based approach, the regulator specifies desired outcomes and allows firms to decide how best to achieve the desired results The UK's Financial Services Authority, for example, is a consolidated regulator that uses a principles-based approach, whereas the Commodities Futures Trading Commission is a functional regulator that employs a principles-based regulatory approach. For a detailed discussion see Peter J. Wallison, "Fad or Reform: Can Principles-Based Regulation Work in the United States?" AEI Financial Services Outlook, June 2007. http://www.aei.org/outlook/26325

(OTS) and the Office of the Comptroller of the Currency (OCC) be consolidated; that there be uniform registration of private pools of capital; that broker-dealer and investment adviser regulation be harmonized and; that a dedicated national insurance office be created.

Salient differences include federal preemption of state consumer laws; the recommended role of the Fed in financial institution supervision; the creation of a permanent council of regulators; the creation of a resolution authority for failed (or failing) nonbank financial institutions; the creation of an optional national insurance charter; the merging of the Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC), and specific recommendations on international financial regulation.

	Blueprint	White Paper
Single consumer protection agency	X	X
Fed involved in systemic risk	X	X
Eliminate thrift charter	X	X
Consolidate OTS and OCC	X	X
Registration of private pools of capital	X	X
Harmonize broker-dealer and investment adviser regulation	X	X
Dedicated national insurance office	X	X
Preemption of state consumer laws	X	
Fed continue supervisory role		X
Optional national insurance charter	X	
Permanent council of regulators		X
Merging the SEC and CFTC	X	
Resolution authority		X
International financial regulation		X

This introduction is followed by more detailed comparisons of selected aspects of the documents' reform proposals, including: consumer protection, the role of the Fed; resolution authority; bank regulation; securities and futures regulation; derivatives regulation; credit rating agency reform; securitization reform; executive compensation reform; insurance regulation; housing GSEs reform and; international coordination. I end the note with some concluding observations.

Consumer protection

The Blueprint's optimal model would create a Conduct of Business Regulatory Agency (CBRA) - an agency with sole, broad authority over all types of financial firms and all types of financial products - whose mission would include consumer financial protection. The White Paper also recommends a single agency to focus on consumer protection; the Consumer Financial Protection Agency (CFPA) would have consolidated authority over rule writing, supervision, examination and administrative enforcement for all credit, savings, payment, and other non-investment related consumer financial product s and services. This section compares the plans with respect to state preemption, investment products and disclosure.

State preemption

Among other responsibilities, the Blueprint's CBRA would issue a federal financial services provider charter that would set appropriate national standards for disclosure and business practices, thereby preempting state law.[6] Unlike the CBRA, the Whitepaper's CFPA's authority would not preempt state laws that are stricter than federal laws.[7]

Investment Products

The Blueprint would consolidate in the CBRA regulatory authority for all types of retail financial products and services, including those in the banking and lending, insurance, and the securities and futures areas.[8] The White Paper's CFPA would cover credit, savings and payment products, as well as related services and the providing institutions.[9] However, the CFPA would not cover investment products such as those currently regulated by the SEC and CFTC.[10]

Plain vanilla

The White Paper's CFPA must follow four broad principles of consumer protection: transparency, simplicity, fairness and accountability.[11] In accordance with the principle of simplicity, the CFPA would be authorized to define standards for products with simple, straightforward pricing - "plain vanilla" - and to require all providers to offer them alongside other products.[12] While the Blueprint does not contain a specific mention of a plain vanilla option, the CBRA would have authority to promulgate and implement disclosure regulations and standards to ensure that providers did not engage in unfair, deceptive or discriminatory sales and marketing practices.[13]

[6] Blueprint, pages 178-180.
[7] White Paper, pages 60-61.
[8] Blueprint, pages 172-176.
[9] White Paper, pages 57-58.
[10] White Paper, pages 55-56.
[11] White Paper, pages 63-70.
[12] White Paper, 66-67.
[13] Blueprint, page 170.

The role of the Fed

Both reports place the Fed at the center of the effort to mitigate systemic risk. The Blueprint's optimal model names the Fed as the market stability regulator. The optimal model would remove the Fed's supervisory role of banks and certain holding companies, while adding responsibility for gathering and disclosing appropriate information and collaborating with other regulators on rule writing. The Fed would also have broad authority to require "corrective actions" to counter threats to the stability of the overall system. These corrective actions could include requiring, "…financial institutions to limit or more carefully monitor risk exposures to certain asset classes or to certain types of counterparties or address liquidity and funding issues."[14]

The White Paper builds on the Fed's current holding company responsibilities to reduce the systemic risk posed by large interconnected firms that are too big to fail. The Fed is charged with the responsibility of the consolidated regulation and supervision of firms whose failure, due to their size and interconnectedness, would pose a systemic risk. This section compares these two plans with respect to consolidated supervision, the role of a coordinating council, lender of last resort authority and, the payment and settlement systems.

Consolidated supervision

The Blueprint recommends reforming consolidated supervision for bank holding companies. It does not continue the Fed's role as a consolidated supervisor. In the Blueprint's optimal model, the Fed instead becomes a market stability regulator with no regulatory responsibility for overseeing individual financial institutions.[15] The notion in the Blueprint is that prudential supervision should be applied only to institutions with a business model that relies on an implicit or explicit federal subsidy -- such as deposit insurance.

The White Paper grounds its approach to the role of the Fed in a central cause of the financial crisis; the destabilizing failures of large and interconnected financial institutions. The White Paper recommends

[14] Blueprint, page 151.
[15] Blueprint, pages 146 to 156

building on the existing holding company supervisory authorities of the Fed.[16] The White Paper expands this responsibility, by enabling the Fed to examine and prudentially regulate the entire holding company structure, including regulated and unregulated subsidiaries and affiliates.[17] This regulation would focus on applying higher capital and liquidity standards to firms whose failure, due to their size and interconnectedness, would pose a systemic risk (Tier 1 Financial Holding Companies (FHCs) hereafter). For bank holding companies that are not designated as Tier 1 FHCs, the White Paper also recommends strong regulatory standards and practices related to capital, executive compensation, and accounting practices.

The role of a council

The Blueprint includes as an initial recommendation for an expanded role for the President's Working Group on Financial Markets (PWG).[18] The proposal is to reinforce the mission of the group as a coordination and communication tool for federal financial regulators, particularly as it relates to market stability, market integrity, consumer and investor protection, and capital markets competitiveness.[19] The Blueprint also recommends expanding the membership of the group to include the Federal Deposit Insurance Corporation (FDIC), OTS, and OCC. Because the Blueprint's recommends moving away from our current balkanized system towards a system with only three federal financial regulators, the need for a coordinating council is less pressing in the optimal model.[20]

The White Paper proposes a council to enable coordination among the federal financial regulators on financial stability matters.[21] The council membership would include the Secretary of the Treasury as chair and the heads of the Fed, FDIC, SEC, CFPA, CFTC, Federal Housing Finance Agency (FHFA) and new National Bank Supervisor (NBS). Supported by Treasury staff, the council would have broad authority to gather market stability related information from regulators and financial institutions. The council would

[16] The Bank Holding Company Act gives the Fed responsibility for overseeing bank holding companies at the consolidated level to protect the insured depository within the holding company structure.
[17] White Paper, pages 21-27.
[18] The group was established in 1988 in response to the 1987 severe stock market decline. Its membership includes the Secretary of the Treasury as chair and the heads of the Fed, SEC, and CFTC.
[19] Blueprint, pages 75-77.
[20] Blueprint, pages146-156.
[21] White Paper, pages 20-21.

share its findings with financial regulators and Congress. In addition the council would consult with the Fed on the identification of Tier 1 FHCs, as well as other market stability related matters.

Lender of last resort authority

The Blueprint contains two sets of recommendations on the Fed's lender of last resort authority. First, in the short term section, the Blueprint recommends that the Fed examine the implications of extending access to the discount window to non-depository institutions and suggests that the PWG also consider these issues.[22] Second, in the context of the optimal long term model, the Blueprint recommends maintaining discount window access for depository institutions as a monetary policy and liquidity tool.[23] It also recommends shaping the Fed's current Section 13(3) unusual and exigent circumstance lending authority into a tool to restore or maintain market stability. It recommends a high threshold for invoking this authority as well as process checks and broad authority for the Fed to set conditions on participates.

The White Paper recommends subjecting the Fed's emergency lending authority under Section 13(3) of the Federal Reserve Act to review and approval by the Secretary of the Treasury.[24]

Payment and settlement systems

The Blueprint recommends that the Fed establish a mandatory payment, clearing, and settlement systems charter.[25] The charter would be limited to systemically important systems and the Fed would have primary supervisory authority over such systems, with other regulators serving a secondary role depending on the nature of the system.

The White Paper also recommends providing the Fed with regulatory authority over systemic payment, clearing, and settlement systems.[26] In cases where a payment or settlement system is not already primarily regulated by the Fed, the existing primary federal regulator should retain its role with the Fed serving as a systemic regulator in a consultative role. If the Fed determines corrective actions are needed, it should have authority to act alone. The White Paper recommends enabling the Fed to provide these systems access to its liquidity facilities in emergency situations.

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[22] Blueprint, pages 83-86.
[23] Blueprint, pages 153-156.
[24] White Paper, pages 78-79.
[25] Blueprint, page 156.
[26] White Paper, pages 51-54.

Resolution authority

The Blueprint does not contain a specific recommendation on reforming resolution authority for financial institutions. The Blueprint's optimal model envisions, however, a system where the market stability regulator would work to eliminate systemic risk wherever possible. If any one firm failure would threaten the system, the market stability regulator would have the authority to address the situation. Generally, however, insured depositories would be resolved and others would be subject to bankruptcy.

The White Paper recommends creating a resolution regime for Tier 1 FHCs.[27] This new regime would be similar to the FDIC resolution model for insured depositories. The new resolution process could be initiated by the Fed, Treasury, FDIC, or SEC. It would require support of two thirds of the Fed members and FDIC board (in limited cases the SEC's consent would be needed in place of the FDIC). The standard for the Treasury to invoke this process is that the relevant firm's failure would destabilize the financial system unless the new resolution regime is utilized. Once the resolution process is initiated, the government could appoint a conservator or receiver (in most cases the FDIC) to resolve the failing firm. In carrying out this responsibility, the FDIC could make loans to the firm, guarantee its assets, or make equity investments in the failing firm. To carry out these actions the FDIC could borrow from the Treasury. These costs would be ultimately assessed on all bank holding companies.

Bank regulation

The Blueprint's intermediate term recommendations eliminate the thrift charter and merge the OTS with the OCC. The optimal model recommends establishing a single prudential regulator for all financial firms that rely on a government guarantee as part of the financial institution's business model, such as deposit insurance and insurance guarantee funds.[28] The White Paper also eliminates the thrift charter and merges the OTS and the OCC. While the White Paper retains the regulatory responsibilities of the FDIC, NBS, and National Credit Union Administration (NCUA) over depositories and it greatly expands the Fed's role, as discussed above.

[27] White Paper, pages 76-78.
[28] Blueprint, pages 157-170.

Charters

The Blueprint's intermediate term recommendations would revoke the thrift charter and merge the OTS and OCC, arguing that the thrift charter is no longer necessary due to increased asset securitization, the increased role of banks in the residential mortgage market, the expansion of Federal Home Loan Bank system, and required thrift asset concentrations.[29] The optimal model recommends pursuing a regulatory structure with one banking charter (for federally insured depositary institutions) and regulator.[30]

The White Paper also recommends eliminating the thrift charter, noting that the powers of thrifts and banks have converged and that there is no longer a need for a depository charter focused on residential mortgages.[31] The OTS would similarly be merged into the OCC, creating the new NBS. Excepting Tier 1 FHCs, the remaining charters would remain intact and their regulators would remain unconsolidated.

State bank regulation

The Blueprint's intermediate term recommendations call for reforming the regulation of state banks at the federal level. Currently, state chartered banks are regulated at the federal level by the Fed if the bank is a member of the Fed and by the FDIC if it has federal deposit insurance. The Blueprint, in the intermediate term recommendations, outlines two options for rationalizing state bank regulation at the federal level: regulatory responsibilities could be shifted from the Fed to the FDIC or from the FDIC to the Fed.[32] In the optimal model, state banks would be regulated primarily by the prudential regulator.[33]

The White Paper supports aligning regulatory standards for all banks, including state chartered Fed member banks and state chartered nonmember banks. The White Paper indicates that the Administration will continue to seek rationalization of bank chartering and regulation beyond the recommendation to make such regulation more uniform within the current regulatory structure.[34]

[29] Blueprint, pages 89-99.
[30] Blueprint, pages 157-165.
[31] White Paper, pages 32-36.
[32] Blueprint, pages 99-100.
[33] Blueprint, pages 161-162.
[34] White Paper, pages 32-35.

Credit union charter

The Blueprint's optimal model recommends replacing the credit union charter with an option for qualifying financial institutions to elect community status under the single federally insured depositary institution charter. This is meant to reflect better the original intent of the credit union designation. To qualify (and receive a corporate tax exemption) these institutions must serve underserved communities, face other, stricter requirements, and be overseen by the prudential regulator.[35] The White Paper recommends continuing the current regulatory regime for credit unions.[36]

Securities and futures regulation

The Blueprint's intermediate recommendations call for a merger of the SEC and CFTC, arguing that product convergence, market participant convergence, and globalization have undermined the rationale for bifurcated securities and futures regulation. The Blueprint also includes recommendations related to existing regulatory programs, including Self-Regulatory Organization (SRO) regulation, investment company regulation, and broker-dealer and investment advisor regulation. Finally, in the Blueprint's optimal model the business conduct regulator would assume investor protection responsibilities from the SEC and a new corporate finance regulator would be established and assume responsibility for issues related to corporate oversight in public securities markets.[37] The White Paper contains several recommendations to improve securities and futures regulation but leaves the overall regulatory structure of the SEC and CFTC unchanged.[38] The recommendations instead focus on making adjustments to existing programs in response to regulatory weaknesses exposed during the recent housing and credit market crisis.

This section reviews recommendations regarding the harmonizing securities and futures regulation, investor protection, brokers-dealers and investment advisers, money market funds, and private pools of capital.

[35] Blueprint, page 161.
[36] White Paper, page 33.
[37] Blueprint, page 145.
[38] White Paper, pages 45-51 and pages 70-74.

Harmonizing securities and futures regulation

The Blueprint recommends unified regulation of securities and futures. It proposes a process for merging the SEC and CFTC: the PWG to draft a set of core principles for the new agency and a joint CFTC - SEC task force would propose harmonization of securities and futures regulation.[39]

While the White Paper does not recommend a merger of the SEC and CFTC, it does propose harmonization of policies at the two agencies, (which presumably could be useful as a step towards a merger). The White Paper calls for SEC and CFTC to produce a collaborative report to Congress containing recommendations to harmonize futures and options regulation. Part of this process would include establishing core principles for both agencies. On issues where the SEC and CFTC fail to reach consensus, the matter would be referred to the coordination council for resolution.

Investor protection

The Blueprint contains several recommendations designed to improve investor protection including the optimal model recommendation to establish a business conduct regulator.[40] The White Paper contains multiple investor protection recommendations, including recommendations to improve investor disclosures, to harmonize regulation of broker-dealers, to expand protections for whistle blowers, establish a Financial Consumer Coordinating Council, and strengthen employee-based and private retirement plans.[41]

Brokers-dealers and investment advisers

The Blueprint contends that another area of convergence in securities is that of investment advisers and broker-dealers. At present, broker-dealers are regulated under the Exchange Act and investment advisers are regulated by the Investment Advisers Act, which results in different regulatory standards. For example, investment advisers have a fiduciary responsibility to their clients unlike broker dealers. The Blueprint points to this and other issues as a source of investor confusion. The Blueprint's intermediate term recommendations propose harmonizing of broker-dealer and investment adviser

[39] Blueprint, pages 106-126.
[40] Blueprint, pages 170-180.
[41] White Paper, pages 70-75.

regulations. It also recommends utilizing self regulation for investment advisers just as is currently the case for broker dealer regulation.[42]

Like the Blueprint, the White Paper contends that retail investors are confused and unable to discern a difference between investment advisers and broker-dealers. It suggests that Congress should pass new legislation to align the fiduciary duty between broker-dealers and investment advisers and harmonize the regulation of investment advisers and broker-dealers. In addition, the White Paper recommends an SEC led study to consider the use of mandatory arbitration clauses in investor contracts. [43]

Money market funds

The Blueprint does not include a recommendation related to money market funds. The White Paper recommends that the SEC strengthen the existing regulatory framework for money market funds to make the funds less susceptible to runs by investors. The White Paper also recommends that the PWG prepare a report assessing whether more fundamental changes are necessary. [44]

Private pools of capital

The Blueprint's optimal model would impact private pools of capital in two ways. First, in order to do business, private pools of capital would have to register with the business conduct regulator.[45] Private pools of capital would obtain a federal financial services provider charter which would allow them to operate. These funds would not be subject to prudential regulation because they do not have access to a federal subsidy or safety net. Second, private pools of capital would be subject to the market stability regulator. [46] They would have to submit market stability related information and instances where the market stability regulator identifies risk concentrations, private pools of capital could be subject to regulatory actions, in some cases even corrective actions.

The White Paper includes a recommendation related to private pools of capital. It would require all such funds to register with the SEC under the Investment Advisers Act.[47] An exemption would be established

[42] Blueprint, pages 106-115.
[43] White Paper, page 72.
[44] White Paper, pages 38-39.
[45] Blueprint, 175-178.
[46] Blueprint, pages 146-153.
[47] White Paper, pages 37-38.

for small funds. This registration requirement would apply to hedge funds, private equity funds, and venture capital funds. These funds would be subject to market stability reporting requirements, investor disclosure requirements, and SEC examinations. The Fed would work with the SEC to determine whether any of these funds would qualify as Tier 1 FHCs. If so, the Fed would regulate these funds for market stability purposes.

Derivatives

In the Blueprint's optimal model the market stability regulator would have the authority to require information from derivatives market participants.[48] It would also be able to produce reports to outline risks in the market and share information with the prudential and business conduct regulators. And, in some cases where additional action is needed, the market stability regulator could issue corrective orders to address systemic risks.

The White Paper calls for increased regulation for Over the Counter (OTC) derivatives.[49] It outlines four objectives for this regulation, (1) preventing derivatives markets from causing instability, (2) promoting efficiency and transparency, (3) preventing manipulation and fraud, (4) protecting unsophisticated investors. Consistent with these objectives, the White Paper recommends requiring all standardized derivative products to be traded and centrally cleared. Nonstandard derivative products could be traded over the counter, but they would be subject to capital requirements and if an exchange accepts a particular derivative product the presumption would be that it is a standard product and therefore central clearing would be required.

Credit rating agencies

Credit rating agencies under the Blueprint's optimal model would be subject to the conduct of business regulator for licensing.[50] In addition, the market stability regulator would have the ability to consider stability related issues caused by the credit rating agencies. The White Paper calls for the SEC to continue its efforts under existing statutory authority to strengthen regulation of credit rating

[48] Blueprint, pages 148-151.
[49] White Paper, pages 46-51.
[50] Blueprint, pages 175-178.

agencies.[51] This includes improving conflict of interest protections and requiring the agencies to differentiate amongst structured products and others.

Securitization

The Blueprint does not include recommendations related to securitization markets. The White Paper recommends that regulators require issuers of securitized products to retain an economic interest in securitized products they originate.[52] It calls for stronger regulations in securitization markets related to compensation practices and transparency.

Executive compensation

The Blueprint did not make specific recommendations with respect to executive compensation. The White Paper recommendations on executive compensation are premised on the notion that executive compensation can threaten safety and soundness. It calls for standards and guidelines to better align executive compensation practices of financial firms with long term shareholder value. The White Paper also supports legislation to make executive compensation committees more independent.[53] Finally, the White Paper advocates requiring all public companies to hold non-binding shareholder votes on executive compensation packages for senior executive officers.[54]

Insurance regulation

Both the Blueprint and White Paper argue that the lack of a federal regulatory presence in insurance distorts the industry's costs, safety, and ability to innovate and compete. The both propose establishing a federal presence in insurance regulation, but differ on whether to explicitly recommend an optional national insurance charter.

[51] White Paper, page 46.
[52] White Paper, page 44.
[53] White Paper, pages 29-30.
[54] White Paper, page 73.

Establishing a federal presence in insurance regulation

First, as an intermediate term recommendation, the Blueprint proposes creating an Office of Insurance Oversight (OIO).[55] This office would have authority to address international issues like reinsurance collateral and it would advise the Secretary of the Treasury generally on insurance policy matters. The White Paper also recommends creating an office, called the Office of National Insurance (ONI), within Treasury to monitor the insurance industry.[56] The ONI would also make recommendations to the Fed regarding insurance companies the ONI believes should be regulated as Tier 1 FHCs. The ONI would also represent the insurance industry internationally.

Federal insurance charter

As a follow up recommendation to the OIO, the Blueprint recommends the creation of an optional federal charter for insurance. Under this recommendation, Treasury would also establish an Office of National Insurance to serve as an optional federal regulator for insurance.[57] This would enable a dual system much like the current dual banking system. Insurance firms could opt into the federal system, thereby foregoing most state insurance regulatory regimes. At the federal level, the regulatory regime would focus on solvency, market competition, and consumer protection. The Blueprint also contains an insurance recommendation in its optimal model. In the long term, the Blueprint recommends insurance regulation take place within the prudential regulator and the business conduct regulator. The prudential regulator would oversee insurance firms that elect to sell state or federal guaranteed insurance products.[58] Insurance firms that do not sell state or federal guarantee products would be chartered and regulated by the business conduct regulator.[59]

The White Paper does not include a recommendation for a federal presence in insurance regulation beyond the creation of the ONI, but the White Paper does imply that the current Administration will support additional proposals to modernize insurance regulation consistent with the six principles

[55] Blueprint, pages 132-133.
[56] White Paper, pages 39-41.
[57] Blueprint, pages 128-133.
[58] Blueprint, pages 165-168.
[59] Blueprint, pages 174-175.

outlined in the White Paper related to systemic risk: capital standards; consumer protection; national uniformity; consolidated regulation and; international coordination.[60]

Housing GSEs

The Blueprint, written before the government placed Fannie Mae and Freddie Mac into conservatorship, includes a limited discussion of the housing Government Sponsored Enterprises (GSEs).[61] The Blueprint recommends that GSE regulation should be different from the regulation of insured depositories so it is clear to market participants which entities are backed by the government and which are not backed by the government.[62]

The White Paper does not contain a recommendation for the structure of the GSEs. It does, however, outline a process for determining their future structure. The White Paper promises a report alongside the release of the President's 2011 budget, wherein the Treasury and Department of Housing and Urban Development developing recommendations for the future of Freddie Mac, Fannie Mae, and the Federal Home Loan Banks.[63] The White Paper indicates that there are many options for reform, including (1) a return to private / public status, (2) gradual wind down and liquidation, (3) nationalization, (4) transformation into utilities, (5) conversion to covered bonds, and (6) break up of Fannie Mae and Freddie Mac into many smaller companies.

International coordination

The Blueprint does not include a recommendation related to international financial regulation issues. The White Paper includes recommendations to strengthen international regulatory standards and coordination.[64] These recommendations relate to the Basel Committee on Banking Supervision, the

[60] White Paper, pages 40-41.
[61] After Fannie Mae and Freddie Mac were placed into conservatorship, then Secretary Paulson delivered a policy speech on the future of the GSEs. He outlined and discussed four options for the GSEs' regulatory structure going forward -- (1) public / private partnership, (2) nationalization, (3) privatization, and (4) utility model. If policymakers decide that the government should support housing, he concluded that the utility model is the preferable structure. The new housing utilities, private sector entities, would have access to a government-provided credit guarantee and would be overseen by a commission, which would govern rates. These utilities would also be subject to federal regulatory oversight and they would not hold investment portfolios.
[62] Blueprint, pages 168-170.
[63] White Paper, pages 41-42.
[64] White Paper, pages 80-88.

Financial Stability Board, derivatives markets, supervision of internationally active financial firms, financial crisis management, prudential regulations, accounting standards, terrorism finance, credit rating agencies, and compensation practices.

Conclusion

Allowing for the different structures and purposes of the documents, and environments in which they were created, there is a substantial amount of overlap between the Blueprint and the White Paper.

Both documents call for the creation of a dedicated agency for consumer financial protection. While both recommend that the thrift charter be eliminated and that the OTS and the OCC be consolidated, the Blueprint's optimal model calls for even further consolidation. The Blueprint and White Paper both recommend that there be uniform registration of private pools of capital, that broker-dealer and investment adviser regulation be harmonized, and that a dedicated national insurance office be created. Again, on the latter, the Blueprint's optimal model goes further, suggesting that an optional national insurance charter be created. Both reports also suggest that the Fed be given a key role in monitoring and mitigating systemic risk. They differ, however, on some of the specifics:

- in the Blueprint, the Fed would also have broad authority and new tools to require "corrective actions" to counter threats to the stability of the overall system. The White Paper does not give the Fed such authority.
- the Blueprint recommends removing the Fed's role as a consolidated supervisor, whereas the White Paper expands it to include subsidiaries of BHCs and Tier 1 FHCs.
- the Blueprint offers a transitional role for an expanded PWG, but does not specify a permanent council of regulators. The White Paper creates a dedicated council of regulators with certain responsibilities related to systemic risk monitoring and mitigation.
- the Blueprint's optimal model does not make recommendations on a resolution authority beyond implying that the Fed, as market stability regulator, may have discretion to forestall the collapse of systemically significant nonbank financial institutions. The White Paper, on the other hand, specifically creates a resolution authority for failed (or failing) nonbank financial institutions modeled after the FDIC's resolution powers for insured depository institutions. The Fed is one of the agencies who can initiate this process.

Notable differences between the two reports include an important feature of the dedicated consumer financial protection agency: the Blueprint's agency would have the power to preempt of state consumer laws, whereas the White Paper's CFPA would not. The Blueprint creates an optional national insurance charter, where the White Paper does not. Similarly, the Blueprint recommends merging the SEC with CFTC, while the White Paper does not. The Blueprint does not offer specific recommendations with respect to international financial regulation, whereas the White Paper does.