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Why Dems May Have Hard Time Stopping Mnuchin Nomination

By Ian McKendry
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Although Steven Mnuchin has close ties to Wall Street and was involved in some contentious deals, Democrats face an uphill battle making the case that those connections disqualify him to serve as Treasury secretary.

Since Mnuchin's nomination, Democratic lawmakers have roundly denounced the former Wall Street banker and hedge-funder, using his banking history and former role at Goldman Sachs against him.

Many have focused on a 2009 deal with the Federal Deposit Insurance Corp., where Mnuchin led a team of investors in acquiring bad mortgages from failed lender IndyMac, many of which later went into foreclosure.

"After years peddling the kind of dangerous mortgage-backed securities that eventually blew up the economy, Mnuchin swooped in after the crash to take a second bite out of families by aggressively — and sometimes illegally — foreclosing on their homes," said Sen. Elizabeth Warren, D-Mass., in a press release Friday.

But former FDIC officials familiar with the deal say the rate of foreclosures of those loans is to be expected given the crisis, and aren't necessarily the responsibility of Mnuchin.

"The fact that there were foreclosures is not surprising given how poorly performing the [IndyMac] portfolio was," said Michael Krimminger, a partner at Cleary Gottlieb Steen Hamilton LLP and a former top FDIC official who was involved in the IndyMac deal.

At issue is a deal nine months after IndyMac's failure to buy its assets. Mnuchin led a group to form OneWest bank and ultimately struck a loss-share agreement with the FDIC. Within less than a year, turned a \$1.6 billion profit. OneWest was later bought by CIT, where Mnuchin served on its board.

Democrats argue that the profits from that deal came at the expense of former IndyMac borrowers, who saw their homes enter foreclosure.

"Donald Trump's choice of Mnuchin is not only a fundamental betrayal of his promise to stand up to Wall Street — it is a punch in the gut to the thousands of American families who were thrown out of their homes by Mnuchin's bank," said Sen. Jeff Merkley, D-Ore., in a statement Friday. "The voices of these Americans should be heard loud and clear as the Senate examines his record and considers his nomination."

Merkley, Warren and Sen. Bernie Sanders, D-Vt., are trumpeting the creation Friday of a website dedicated to telling the stories of borrowers who were foreclosed under Mnuchin's watch.

Whether he is responsible, however, is an open question. As part of the deal, the FDIC created a loan modification program for IndyMac borrowers, but Mnuchin was not required to offer the modifications as part of the agreement. Mnuchin's bank generally chose to foreclose, leading some outside observers to pin the blame on him.

"One monumental concern I have about Steve Mnuchin is his role as foreclosure king, profiting-off and kicking American families to the curb. Rewarding that behavior with a cabinet position is at odds with candidate Trump's the populist platform," said Jennifer Taub, a law professor at the University of Vermont.

But others say Mnuchin simply played by the rules and can't be blamed.



Image: Bloomberg
Sen. Elizabeth Warren, D-Mass., criticized Treasury Secretary-designate Steven Mnuchin's role in buying IndyMac mortgages, arguing he "swooped in after the crash to take a second bite out of families by aggressively — and sometimes illegally — foreclosing on their homes."

"That deal was selected simply to maximize the recoveries for the FDIC insurance fund and the creditors," said Krimminger. "The FDIC modified mortgages as long as the FDIC was responsible for IndyMac and the FDIC also initiated foreclosures while it was responsible for IndyMac... You can't expect bankers to be doing a social program."

Democrats are also hitting Mnuchin over his ties to Goldman, a firm that President-elect Donald Trump has blasted in the past.

Yet plenty of past Treasury secretaries have had similar ties to large Wall Street firms. Treasury Secretary Jack Lew was an executive at Citigroup before joining the White House, while former secretary Hank Paulson was the former CEO of Goldman. Robert Rubin, the Treasury secretary in the Clinton administration, was also a Goldman banker.

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Some Democrats have tried to argue that Mnuchin is more conflicted because CIT, where he was a board member until resigning after named by Trump, is considered systemically important by the Dodd-Frank Act. As a result, the Financial Stability Oversight Council, which Mnuchin would chair as Treasury secretary, has supervisory powers over Mnuchin's former bank.

But such ties are not unusual.

"Treasury secretary is a position where conflicts of interest can be very predictable," said Andrea Bonime-Blanc, chief executive officer of GEC Risk Advisory. "We can pick on [Mnuchin], but we have had a number of Treasury secretaries who have held leadership roles in financial or other major business institutions who might have had real or perceived conflicts of interest because they sat on the board of a bank or were a CEO or other important decision maker."

Claire Hill, a law professor at the University of Minnesota Law School about Mnuchin's nomination, said, "I don't know how realistic it is to say we want someone who knows all about that world, but hasn't been part of it, and doesn't have close connections with people who have been part of it."

Robert Kelner, a partner at Covington & Burling, said Mnuchin's financial industry background is normal for a Treasury secretary. "Fundamentally I don't think it's any different than the issues that every Treasury secretary faces," he said.

But consumer groups argue that Mnuchin is another in a long line of Treasury secretaries who care more about Wall Street than Main Street.

"Part of the point of what Elizabeth Warren has been trying to do for some years now and we always supported is we don't make Treasury the private preserve of Goldman Sachs," said Marcus Stanley, policy director at Americans for Financial Reform. "There have been times where it looked like it in the past. We don't think that worked out very well and we don't want to go back to those days."

The rhetoric and opposition against Mnuchin will likely be elevated during his confirmation hearing before the Senate Finance Committee, and Democrats will attempt to argue Mnuchin was unethical and aggressive in moving to foreclosure for IndyMac borrowers.

Mnuchin "represents the worst of Wall Street," said Paulina Gonzalez, executive director at the California Reinvestment Coalition. "He harmed working class Americans and that is something that both Republican and Democratic lawmakers should stand against."

But Democratic opposition is likely to prove futile because Mnuchin will require a simple majority to be voted in. With the GOP controlling 52 Senate seats, Mnuchin's future in the Treasury job is all but assured.

