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How a Romney Victory Would Impact the CFPB

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WASHINGTON - Although the prospects of eliminating the Consumer Financial Protection Bureau are close to zero, changes to its leadership structure appear increasingly likely if Mitt Romney wins the White House.

What is less clear is what a Republican administration would mean for the agency in the short term.

Republicans have refused to confirm an agency head until reforms are made, a mantra that may make it awkward to send up their own nominee.

But the urgency with which they move ahead depends largely on the agency's director, Richard Cordray, who many expect will ride out the last year of his recess appointment before running for higher office in his home state of Ohio.

"If you're running for office and you want to be a foil against the administration, staying in and being a thorn in their side kind of works to your benefit," said Mark Calabria, the director of financial regulations studies at the **Cato Institute,** and a former staffer for Republican Sen. Richard Shelby. "There's a lot of reasons to suspect he would not leave."

As a recess appointee, Cordray's term lasts until the end of 2013, rather than the typical five-year term for a Senate-confirmed appointee.

Political appointees often offer to resign when a president of the opposing party is elected so that the new administration has a chance to install their own people.

But with Republicans so openly hostile toward the Dodd-Frank Act, and the CFPB in particular, observers said Cordray is likely to stick around.

"I think he has the wherewithal to stay even if it becomes uncomfortable," said Daniel Meade, a partner with Hogan Lovells and former senior counsel for the House Financial Services Committee. "He might even view it as his duty. I doubt that Director Cordray would resign to let a President Romney appoint a new director. I think he'd stick it out as long as the term allowed."

Isaac Boltansky, an analyst at Compass Point Research & Trading, said he expects Cordray to make a move back to Ohio at some stage, however.

"I think he would make the Romney administration make the next move, but ultimately we all know what his next address is go to be: he'll be going back to Columbus," Boltansky said.

Some observers said they don't expect the Romney administration would rush to fill the slot.

The new president would be faced with a slew of open financial regulatory positions, and is likely to be far more focused on filling slots at the Treasury Department, Federal Deposit Insurance Corp. and Securities and Exchange Commission.

In addition, Calabria said, sending up a nominee for the bureau could be viewed as somehow legitimizing an agency of which Republicans remain skeptical.

"It's kind of hard to say we're against the agency and we think it's going to be reformed and we're not going to nominate anybody until it's done," Calabria said. "You might have a situation where Romney sends a name up and sends a message as well saying, 'I support these changes and I'm committed to working with Congress to do that.'"

With the potential for eight years under a Republican administration, some say a Romney win could lead to a flurry of activity as the CFPB tries to make the most of its final year under Cordray's leadership - another common side effect of a new party taking control of the White House.

"Even the Clinton administration, which wasn't defeated, they did a lot in the last few weeks to finish up what they wanted to do, so I would expect that to happen," said Wayne Abernathy, the head of financial institutions policy and regulatory affairs at the American Bankers Association, and a former assistant Treasury secretary.

Still, others pointed out that rules, by their nature, take a long time to prepare, propose and finalize, and that it would be a Herculean effort for the CFPB to shift gears or ramp up activity in the face of a new administration.

Even if they could, others said it's not politically feasible for them to do so.

"That can backfire," Meade said. "Because then you might say, 'OK, this agency really is overstepping its mandate.' Then do you give credence to arguments on the other side of, 'Let's repeal this agency?'"

Cornelius Hurley, the director of the Boston University Center for Finance, Law & Policy, said the overall supervisory climate is likely to change under a Republican president who has campaigned on a platform of less regulation.

"It would be hard to swim against the tide if the zeitgeist in Washington becomes deregulation again, and you have this one agency that's going in a different direction," Hurley said.

While the short-term picture is somewhat blurry, observers said it appears likely that the Romney administration would have support for legislative fixes to Dodd-Frank, including changes to the CFPB.

As part of their refusal to vote on nominee, Republicans called for three key changes: they want the bureau to be led by a five-member commission, rather than a single director; they want the agency to be funded through the appropriations process; and they want to make it easier for regulators to overturn the agency's decisions.

The commission structure, which had the initial support of the bureau's architect, Elizabeth Warren, as well as some Democratic lawmakers, appears to have an inside track toward passage, Boltansky said.

"Accountability now all of a sudden may become much more appealing to consumer groups when there is a Republican administration in office," Abernathy said. "But I think what's good about that is Republicans have established a record of saying they want accountability, too. So maybe that's what brings the Rs and Ds together."

Kate Davidson is a reporter in American Banker*'s Washington bureau, where she covers the Treasury Department, Consumer Financial Protection Bureau and Office of the Comptroller of the Currency. She previously wrote about community banks in the Northeast and Mid-Atlantic. Before joining* American Banker*, Kate covered the House Financial Services Committee and Senate Banking Committee for* Congressional Quarterly*. She began her career in New Hampshire, where she covered the 2008 presidential primaries and business news for the* Concord Monitor *in Concord, N.H.*