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Cordray Confirmation Solidifies CFPB's Power

By: Joe Adler – July 16, 2013

The Senate's approval of Richard Cordray's nomination to run the Consumer Financial Protection Bureau likely puts an end to another crucial fight over the bureau's structure and its ability to impose far-reaching regulations on the industry.

Republicans' decision to lay down their swords in their prolonged challenge to Cordray — who has been running the agency under a controversial recess appointment — undercuts their efforts to force structural changes at the agency. Although some members vowed to continue pushing for reforms, like subjecting CFPB decisions to a commission instead of a single director, such changes now are highly unlikely with Cordray's confirmation assured.

"It will likely end the notion of a CFPB commission assuming the confirmation proceeds," said Leonard Chanin, who helped lead the CFPB's rulemaking division before joining Morrison Foerster late last year.

Lawmakers voted 66 to 34 late Tuesday to confirm Cordray following a previous vote earlier in the day to end debate on his nomination. The victorious outcome for the CFPB nominee was a part of a broader Senate compromise to move a slate of Obama administration nominees.

But Tuesday's developments also removed a cloud of uncertainty hanging over the agency. Ever since Cordray's original nomination two years ago, Republicans and some in the industry saw the appointment as a way to negotiate changes to the CFPB's structure that had been mandated by the Dodd-Frank Act. In addition to a commission to oversee the agency, some lawmakers have also pushed for subjecting the bureau to a more rigorous appropriations process.

The end to the fight over Cordray also removes lingering doubts about the agency's ability to write rules. Critics argued that Cordray's recess appointment had been made on faulty legal grounds, and therefore the bureau was not fully authorized to implement its mission because it lacked a confirmed director. (Dodd-Frank required a permanent director to be installed for the agency's authority to be realized.)

Yet those claims appeared less credible following Tuesday's developments. Although the Supreme Court recently agreed to take up a case involving the legality of Obama recess appointments, which experts said could affect Cordray's position, observers said that case mattered less after Tuesday's vote.

"It essentially guts that premise of the issue," said Mark Calabria, director of financial regulation studies at the Cato Institute. Arguments about "the constitutionality of his

nomination go away. ... Even if the court finds that his appointment was initially invalid, he's able to go back and rubberstamp all the decisions he made."

Some observers said the Senate outcome proves GOP lawmakers were on shaky ground initially to use Cordray's position as a way to seek CFPB structural changes.

"It's recognition that the Republicans truly didn't have that leverage to begin with" to get a deal done, said Edward Mills, a financial policy analyst at FBR Capital Markets. "And that is why Democrats refused to negotiate here. They ultimately needed to just bring it all to a head and that's what they did today."

Cordray's fate was joined with that of several other Obama administration appointees as Senate leaders this week sought to break a logjam over appointees. Although members came out of late-night talks Monday with no apparent deal — raising the prospect of Democrats using a "nuclear option" to suppress Republican filibusters of presidential nominations — a successful vote early Tuesday to end debate over Cordray's nomination signaled progress.

While the exact details of any compromise were unclear, it appeared that Cordray and other nominees would be approved in return for the administration withdrawing two of its nominees to sit on the National Labor Relations Board.

Chanin said Tuesday's vote allows both the bureau and the industry to finally move on from the contentious nomination fight.

"The biggest impact, I think, is a philosophical one and that is in bringing both finality to the issue and certainty to the industry, to consumers, to staff at bureau and other agencies," he said. "The greatest thing is simply certainty."

Still, Senate Republicans said they will not abandon efforts to push for changes at the CFPB.

"I would be disappointed if we don't obtain some structural changes. Now, the timing of all of that ... is not as concerning to me as the fact that we get structural changes to the CFPB," said Sen. Mike Crapo of Idaho, the top Republican on the Senate Banking Committee, before the cloture vote. "Regardless of the outcome, I'll continue to fight for structural changes."

Sen. Rob Portman, meanwhile, unveiled legislation on Tuesday to establish a dedicated, Senate-confirmed inspector general at the CFPB, even after voting in favor of moving Cordray's nomination forward earlier that day. Currently, the agency shares its IG with the Federal Reserve. Other lawmakers have also introduced bills to change aspects of the agency's structure in recent months and are unlikely to drop the issue.

"This quiets the calls for structural changes to the CFPB, but by no means silences them," said Isaac Boltansky, a policy analyst at Compass Point Research & Trading, of the Cordray vote. "The leverage has definitely lessened, which is why it's hard to see a definitive moment of action. But it's hard to see these talking points go away."

At the same time, questions also remained about whether any easing of friction on Capitol Hill over appointments will affect the nomination of Rep. Mel Watt, D-N.C., to lead the Federal Housing Finance Agency, which has also sparked GOP opposition.

"The question for Senate Republicans is: do they want to trigger use of the nuclear option over the director of FHFA?" said Mills. "Many Republicans do not want Watt to be director, but I don't know if at this point given the compromise they're willing to upend Senate tradition over that decision."