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Cordray Nomination at Stalemate as Senators Refuse to Negotiate

By: Cheyenne Hopkins - March 12, 2013

A U.S. Senate hearing today on Richard Cordray's second nomination to head the Consumer Financial Protection Bureau will probably be less about his leadership than Republican distaste for the bureau itself.

Cordray faces a pledge by 43 Republican senators -- enough to prevent a floor vote -- to block his confirmation unless Democrats agree to structural changes to the bureau, created by the 2010 Dodd-Frank Act. Their position hardened after a federal court ruling raised questions about the validity of President Barack Obama's 2012 recess appointment of Cordray to direct the bureau after Republicans blocked his first nomination.

Enlarge image Consumer Financial Protection Bureau Director Richard Cordray

Consumer Financial Protection Bureau Director Richard Cordray said, "As the economy recovers, we want people to know they now have a new agency standing on their side, looking out for their interests, to help restore their confidence in the consumer financial marketplace." Photographer: Andrew Harrer/Bloomberg

The parties are refusing to negotiate as they await further court rulings.

"There are legitimate arguments on both sides but until you have a court ruling I can't see a lot of pressure on either side to compromise," said Joseph Engelhard, a former Treasury official who is now senior vice president at Capital Alpha Partners LLC, an investment advisory firm.

The structural changes demanded by Republicans include putting the bureau under the control of a bipartisan commission and subjecting its budget to the congressional appropriations process. The agency's budget is now linked to the Federal Reserve.

"Until key structural changes are made to the bureau to ensure accountability and transparency, I will continue my opposition to any nominee for director," Senator Michael Crapo, a Republican from Idaho and the ranking member on the banking committee, said in a statement.

Wrong Time

Democrats contend that the time for such debates ended when the bureau was approved by Congress.

"There is simply no proof that structural changes to the CFPB are necessary, and demanding changes is just politics at play," Senate Banking Committee Chairman Tim Johnson said in a

statement. “It is time to confirm Rich Cordray as the CFPB director to give the American people the protections they deserve and the marketplace the certainty it needs to help strengthen our economic recovery.”

Cordray, 53, made no mention of the court challenge or Republican’s structural change demands in testimony prepared for today’s hearing.

“As the economy recovers, we want people to know they now have a new agency standing on their side, looking out for their interests, to help restore their confidence in the consumer financial marketplace,” Cordray said.

Cordray can be confirmed by a majority vote, but to call the vote on the Senate floor, Democrats need 60 members’ support. With 55 members in the Senate’s Democratic caucus, five Republicans would have to break ranks to allow a vote.

Court Ruling

The ruling by the U.S. Court of Appeals in Washington overturned the validity of three National Labor Relations Board recess appointments made at the same time as Cordray’s, making him vulnerable to a similar legal challenge. An invalidation of of Cordray’s appointment would threaten the legitimacy pf agency’s regulations and enforcement actions under his leadership.

“President Obama clearly took things too far violating the longstanding procedure for recess appointments,” Senator David Vitter, a Republican from Louisiana, said in an e-mail. “This will have an impact on Richard Cordray and the CFPB because the facts are exactly the same as the NLRB.”

The two parties are “deadlocked until a court rules on Cordray,” said Mark Calabria, a former Senate Republican staffer and director of financial regulation studies at the Cato Institute. He said Republicans were emboldened since the labor board decision.

Awaiting Court

“If a court rules against Cordray or it goes to the Supreme Court and it rules against Cordray, it will force Democrats to come to the table. But they won’t do anything until that happens.”

Jaret Seiberg, senior policy analyst at Washington Research Group, a unit of Guggenheim Securities LLC, said a problem with waiting on the court is that a final decision may not come until the end of the year.

“There’s an obvious middle ground that you change the structure but leave the funding in place,” Seiberg said. “I think that’s eventually where we get but we are less optimistic that the Senate will get there quickly. This could easily drag out until 2014.”

Republican Senator Bob Corker of Tennessee says he sees hope for compromise. He and Senator Rob Portman of Ohio were the only Republicans not to sign the Feb. 1 pledge to block any CFPB nominee absent the structural and funding changes.

‘Easily’ Solved

“The administration if they wanted to solve this could easily do it and still have a very robust entity,” Corker said in an interview. “I know that they know it could easily be solved.”

On Feb. 14, a group of 54 Senate Democrats sent the president a letter noting their support of Cordray and opposition to any structural changes to the consumer bureau. The nomination of Cordray and structural changes to the CFPB should not be tied together, they said.

“The precedent Republicans are setting with Cordray is a terrible precedent,” Senator Sherrod Brown, a Democrat from Ohio, said in an interview. According to Brown, Senate historians say this is the first time in the chamber’s history “where one party said no to a nominee because they don’t like the agency and the agency is the law.”

No Linkage

Senator Jack Reed, a Democrat from Rhode Island, said the structural changes and his nomination should not be linked.

“If there’s reasonable suggestions that can be met, they should be met,” he said. If Republicans are saying, “he’s hostage to our dislike, retroactively, of the Consumer Financial Protection Bureau, I don’t think that’s qualifies,” Reed said in an interview.

Democrats have used Cordray’s record as CFPB director, including setting mortgage underwriting and servicing standards and settlements with credit card companies, as a positive reason for his confirmation.

Lawmakers who opposed the creation of the consumer bureau for fear that it would “be an agency run amok” must by now see “that has not proven to be the case,” Senator Mark Warner, a Virginia Democrat, said in an interview.

‘Still Responsive’

“I don’t think I’ve heard either side, Democrat or Republican, anyone having concerns about his character, the job he’s done,” said Senator Joe Manchin, a West Virginia Democrat. “They’re concerned about putting so much power” in a single director. “But the bottom line is he’s still responsive and has to be responsive with us.”

Brian Gardner, senior vice president for Washington research at Keefe, Bruyette & Woods Inc., said there is “no reason to believe” Cordray’s chances at confirmation are any better this time than during his last nomination.

“If Richard Cordray withdrew his nomination tomorrow and the administration nominated someone else he would run into exactly the same road block,” Gardner said. “It has very little to do with him.”