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Battle Looms Over Obama's Financial Reforms

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Another of President Obama's signature achievements, the Consumer Financial Protection Bureau, is endangered by Donald Trump's Treasury secretary pick.

The regulatory agency created in the wake of the 2008 financial crisis has long been assailed by GOP critics as the most unaccountable federal agency in history. Congress had no say in its budget or in its leadership, unlike other federal agencies.

Trump vowed to "dismantle" the law that created the agency and boost jobs by lightening the federal paperwork on businesses. By naming Steven Mnuchin, a former Goldman Sachs executive, who has also questioned the landmark Dodd-Frank Act, to run the Treasury department.

Aside from Trump and his new cabinet, the courts are also a threat to the agency. A federal appeals court recently handed down a decision finding the agency's governing structure is unconstitutional. It is not clear whether the new administration will support an appeal of that ruling.

Congress is also working to trim or abolish the agency. The Financial Choice Act, which was introduced in the House in September, would overhaul the Dodd-Frank Act and put the CFPB under a bipartisan commission, which would effectively replace its current director, Richard Cordray. That commission will be composed of members confirmed by the U.S. Senate.

Mark Calabria, the director of financial regulation studies at the Cato Institute in Washington, D.C., sees a strong case for Trump removing Cordray right after he assumes the presidency, based on the language in the Dodd-Frank Act and the director's administrative record.

"The first thing that can be done is replacing the director," Calabria told AMI Newswire. "Eventually a commission might take over, but it's highly unlikely that would happen next year."

Expect Congress to eventually limit the agency's powers to take action against financial institutions for "abusive" practices, he said.

The bureau is immune from traditional congressional oversight and is at odds with America's democratic principles, said Sen. James Lankford (R-Okla.) last week in an annual report detailing wasteful spending by the federal government.

“Almost everything the CFPB does is redundant to another federal agency,” Lankford’s report said. “It should never have been created. The best use of funds would be to abolish the CFPB and spend the available dollars to reform and appropriately staff the other regulatory entities.”

Rather than being funded through congressional committees, the bureau receives up to 12 percent of the Federal Reserve’s annual earnings to pay its administration costs. Without congressional funding, it enjoys very little congressional control.

The bureau’s regulatory actions have cost $2.8 billion, creating more than 17 million hours of added paperwork burdens, according to American Action Forum, a non-profit free-market research group.

Bureau supporters see it differently. Better Markets, a nonprofit, nonpartisan group that has been labeled a Wall Street watchdog, termed the CFPB among the most successful federal agencies ever.

“In just a few years since it was created, it has returned more than $11 billion to more than 27 million Americans ripped off by financial firms,” the group’s president, Dennis Kelleher, said in a prepared statement. “After more than a decade of being victimized by financial predators, that is great news for America’s financial consumers.”

The bureau needed to be independent and protected from partisan politics because Congress and President Obama knew that the agency would be a target of powerful financial interests, Kelleher said.

The agency's battle with Wells Fargo Bank is either its finest hour or its lowest point, according to defenders and detractors. The agency fined the bank $100 million when some of its low-level employees were caught opening extra accounts, that weren’t authorized by customers, in order to hit sales targets. Since virtually all of the accounts were closed within days of being opened and no depositor's money was lost, critics see the Wells Fargo action as an example of regulatory overkill. Agency defenders see the move as shield against corporate abuses of ordinary people.

The bureau is also engaged in a legal fight to maintain its current governing structure. Under the legislation creating the agency, the director can only be fired by the president with cause – rather than at will. This is highly unusual among senior federal positions, which typically serve "at the pleasure of the president."

A three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit found that this concentrated too much power into the hands of a single administrator and was thus illegal. “Two of the judges on the panel … held that the bureau’s structure was unconstitutional,” bureau spokesman Samuel Gilford told AMI. “The bureau has now sought to have the panel’s decision reheard by all the judges of that court.”

Three other agencies out of hundreds of federal entities, including the Federal Trade Commission, are run by a single individual who could be removed only for cause, so the agency is not a historical anomaly, the CFPB argued in court filings.

So far, the courts have not agreed.