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Polarizing CFPB Pick May Signal Obama's Willingness to Compromise

By Kate Davidson and Kevin Wack, *American Banker*

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WASHINGTON — With the administration choosing someone to lead the Consumer Financial Protection Bureau who may draw more GOP opposition than Elizabeth Warren, some insiders speculated the White House may be open to compromise over the bureau's structure to win confirmation for Richard Cordray.

"It's hard to see how he can get confirmed unless the president is willing to cut a deal with Senate Republicans," said Jaret Seiberg, financial services policy analyst at MF Global's Washington Research Group. "That's why you could definitely say that this nomination opens the door to a regulatory relief bill in this Congress."

If a deal to reform the bureau's operations cannot be made, that only increases the likelihood the White House will try to install Cordray — a former Ohio attorney general with a consumer-friendly record that makes bankers nervous — through a recess appointment, allowing him to start the job on a short-term basis without a Senate vote.

Republicans have remained opposed to any potential CFPB director until, they say, the White House reforms how the bureau operates under the Dodd-Frank Act. GOP lawmakers have called for among other things subjecting the bureau to the appropriations process, and having a commission — rather than a single director — sign off on its policy decisions.

Following the announcement of Cordray's nomination, key GOP senators indicated no softening on their views.

"Until President Obama addresses our concerns by supporting a few reasonable structural changes, we will not confirm anyone to lead" the bureau, said Sen. Richard Shelby, R-Ala., the banking committee's top Republican.

To be sure, the administration may choose a different route. During a Rose Garden speech announcing Cordray's nomination on Monday, Obama seemed to take a firm stance against changes that would weaken the CFPB.

"I will fight any efforts to repeal or undermine the important changes that we passed," he said.

If the White House ultimately resisted reforms to the bureau's structure and lacked 60 Senate votes needed to ensure Cordray's conformation, the timing of the nomination Monday at least would allow a hearing before the Congress' August recess, when the administration presumably could try to put him in the job without a floor vote.

"You certainly are setting this up where you do have the option of a recess appointment in August, because they do want to have a hearing first," said Mark Calabria, a former staffer for Shelby and now director of financial-regulation studies at the Cato Institute.

Cordray, now the director of enforcement for the new bureau, was immediately painted by industry insiders as a strong consumer crusader. While critics had viewed Warren — the architect of the bureau — as a zealot, observers said privately they would take her over Cordray.

"He's perceived as a consumer warrior, so I'm not sure that critics of the agency will feel that they're better off with him," said Laurence Platt, a partner with K&L Gates in Washington. "Consumer advocates who are disappointed about Elizabeth Warren not being nominated will take some comfort in his nomination."

Even before Cordray's nomination for director, the industry was sweating over his appointment to run the bureau's enforcement division.

As early as 2005, he was already criticizing banks over their handling of foreclosures. Then the treasurer of

Franklin County, Ohio, in the area surrounding Columbus, he appeared regularly in news stories on banks' failure to maintain foreclosed homes or pay delinquent property taxes.

"Based on his established record as the attorney general of Ohio, the industry can expect very aggressive enforcement with a focus on litigation," said Andrew Sandler, a partner with Buckley Sandler LLP.

A Marshall Scholar and University of Chicago Law School graduate, who clerked for Supreme Court Justices Bryon White and Anthony Kennedy, Cordray was hired by the law firm of Jones Day. Court records indicate he worked primarily on commercial litigation and tax cases for the firm.

Cordray's political career has not been marked by great luck. He won a seat in Ohio's legislature in 1990, only to see his district promptly merged with that of a 20-year incumbent. He ran for a seat in the U.S. House in 1992, but lost that race — as well as contests for state attorney general and a U.S. Senate seat.

His campaigns emphasized a scrappy approach: the official bio for his 2000 Senate run notes his political defeats and that his first job was working for minimum wage at McDonald's.

In his campaigns for attorney general, unions and law firms doing business with attorneys general from multiple states have been key contributors, drawing criticism from his opponents.

As attorney general, Cordray distinguished himself by filing lawsuits against mortgage servicers for their foreclosure practices well before the "robo-signing" scandal vaulted the issue to a national stage.

In March 2010, Cordray and a local prosecutor announced indictments of 16 individuals on charges related to mortgage fraud, alleging artificial inflation of home values and providing false information on mortgage applications.

In July 2010, his office reached a $725 million settlement with insurance giant AIG over allegations that the company engaged in accounting violations and stock price manipulation.

Meanwhile, in October 2010, Cordray sued GMAC Mortgage and its parent company, Ally Financial, over allegations of robo-signing. His office said that it was the first in the nation to take legal action in the robo-signing scandal. The Ohio attorney general's office recovered more than $2.7 billion from major Wall Street firms during Cordray's two-year tenure, according to the office's 2010 annual report.

Richard Gottlieb, the director of the financial industry group at Dykema law firm, said he expects Corday, one of Warren's closest confidants and one of her earliest recruits, will hew closely to the vision she has laid out for the bureau.

"This is the functional equivalent of when a baseball manager gets thrown out of a ballgame, but is sitting in the locker room," Gottlieb said. "I don't think we're going to see a major change in policy, because one would expect Cordray to work closely with Warren even when she returns to Harvard."

Seiberg said the industry is right to view Cordray's nomination with concern, but added the nomination does not automatically mean his appointment will be disastrous for banks.

"He was a crusading state AG, who sued a lot of financial firms, but that's also what we expect from state AGs," Seiberg said. "So I think the industry has a valid reason to view him suspiciously, but it's often dangerous to view a person in one job and assume they're going to approach a different role in the same way."

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