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Cordray Looks Beyond Lawsuits to End Abuses as Consumer Enforcer

By Carter Dougherty - Sep 6, 2011

[Richard Cordray](#), President [Barack Obama](#)'s nominee to run the U.S. Consumer Financial Protection Bureau, gained national attention by suing major financial firms including [Bank of America Corp. \(BAC\)](#), [JPMorgan Chase & Co. \(JPM\)](#), [Citigroup Inc. \(C\)](#) and Ally Financial Inc. over botched mortgage servicing.

Yet Cordray, who filed those suits as Ohio's attorney general, says he sees the new federal agency as a way to enhance consumer protections through a range of responses besides litigation.

The consumer bureau has a "bigger and more flexible toolbox" than he had in Ohio, including research, regulations, consumer education and supervision of financial firms, Cordray said in testimony prepared for his Senate confirmation hearing today and obtained by Bloomberg News.

"I know from my own experience that lawsuits can be a very slow, wasteful, and needlessly acrimonious way to resolve a problem," Cordray said in the testimony.

Cordray plans to tell members of the Senate Banking Committee that in some cases, he believes litigation can be beneficial for business as well as consumers.

"If people are ignoring or evading consumer protections laws -- and seeking to gain an unfair advantage over their law-abiding competitors -- then litigation is an essential tool, and we will use it judiciously," Cordray said in the testimony.

Cordray, 52, is currently working as director of the bureau's enforcement division. There is no timetable for a vote on his nomination, by either the committee or the Senate.

No Guarantee

In fact, there's no guarantee that the Senate will vote on his nomination at all, said Mark Calabria, director of financial regulation studies at the [Cato Institute](#). Because his nomination is widely opposed by Republicans, the Senate could fail to act until after the 2012 presidential election, leaving the agency without a confirmed director through the end of Obama's presidential term, Calabria said

in an interview.

Forty-four Republican senators have vowed to block Cordray's path to the director's post, saying they will object to any nominee unless the bureau is substantially restructured. In the 100-member Senate, nominees generally need 60 votes for confirmation.

"They're saying, 'We don't care if he's Mother Teresa. He's not going anywhere,'" said Calabria, a former aide to Senator [Richard Shelby](#), the top Republican on the banking committee.

No Director

The consumer bureau officially began work on July 21 and is headed by Raj Date, whose title is "adviser to the Treasury Secretary." When a director is confirmed, the consumer bureau becomes an independent agency within the [Federal Reserve](#).

Republicans forced Congress into "pro forma" sessions over the August break, a step that prevented Obama from using his powers to make Cordray director as a recess appointment.

As [Ohio](#) attorney general, Cordray's work on financial services went beyond bringing lawsuits against Wall Street banks. In particular, Cordray helped create a new regulatory regime that brought mortgage brokers under state regulation.

During the fight in the Congress over the Dodd-Frank Act that created the consumer agency, Cordray argued that regulation was crucial to prevent the industry from sliding back into bad practices. In February 2009, quizzed as to whether the industry's own changes made government rules redundant, Cordray scoffed at the notion that banks can regulate themselves.

"If they are making the changes, then they really can't complain about the burdens the agency would create," Cordray told reporters on a conference call, according to a transcript. "This would simply be oversight to make sure that it isn't a one-time thing and that it sustains itself over time."

Cordray declined to be interviewed for this article. CFPB spokeswoman Jen Howard said he was turning down all requests during the nomination process.

Ohio Bankers

Not all bankers oppose Cordray's nomination. He has picked up the endorsement of the head of the [Ohio Bankers League](#), Michael Van Buskirk, who wrote the Senate on July 25 that Cordray would prove "an able director" of the consumer bureau.

“Consumer protection has been a lifelong concern, and he has gone about it in innovative ways,” Van Buskirk said in an interview. “He also understands that consumer protections are not worth it if they are outweighed by the costs.”

Van Buskirk said that in Ohio, Cordray learned to work with small banks as well as major players: Huntington Bancshares Inc., [Fifth Third Bancorp \(FITB\)](#) and [KeyCorp \(KEY\)](#)'s KeyBank are all based in Ohio. JPMorgan Chase and U.S. Bancorp's U.S. Bank have major operations there.

Foreclosure Prevention

While Ohio's treasurer from 2006 to 2008, Cordray served on the state's Foreclosure Prevention [Task Force](#), which drew up recommendations for how to keep Ohioans in their homes. That marked him as unusual, said Jennifer Flatter, staff director for the group, because the treasurer was not expected to be active on housing issues.

Cordray endorsed a strategy that mixed enforcement with new regulations on mortgages. “His approach was well-rounded,” Flatter said in an interview.

One key result of the task force, which Cordray supported, was a licensing law for mortgage brokers. The initial round of applications demonstrated that 10 percent of the state's brokers had criminal records, said Van Buskirk of the bankers' league.

“We now have one of the strongest consumer-protection laws for mortgages,” David Rothstein, a researcher with [Policy Matters Ohio](#), a Cleveland-based policy analysis group. “It would be really difficult to do subprime in Ohio again.”

Publicity

Cordray has also endorsed publicity as a tool in fostering change. For instance, he quietly encouraged an activist group in Ohio that tossed plastic “loan” sharks onto a bank executive's lawn to draw attention to mortgage abuses. And he has said the consumer bureau could hold “investigative hearings” to shed light on trends in consumer finance.

“Don't underestimate the power of an agency to identify abusive practice and bring it into the light of day,” Prentiss Cox, a former Minnesota assistant attorney general in charge of enforcement, said in an interview. “You can often solve the problem simply by highlighting it.”

To the extent that the consumer bureau chooses litigation, Cordray's presence as director portends tight cooperation with state [attorneys general](#), said Bernard Nash, head of the state attorneys general practice at the law firm Dickstein Shapiro LLP. [Elizabeth Warren](#), the former Obama administration

adviser who set up the bureau, wooed state officials with promises of support from [Washington](#).

“This makes for an even higher probability that the consumer bureau is going to work hand-in-glove with the attorneys general,” Nash said in an interview.

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