

AMERICAN BANKER

Second CFPB Fight May Be Just as Contentious as First

By: Joe Adler – January 25, 2013

Here we go again.

Richard Cordray was reintroduced Thursday as the administration's long-term choice to run the Consumer Financial Protection Bureau, but huge questions remain over whether his second nomination for the job is any more likely to be approved than his first.

Immediately out of the gate, Republican leaders — still fuming over Cordray's recess appointment a year ago — challenged the move. Their position appears identical to when, in May 2011, Republicans mounted a campaign to block any potential director to run the bureau — including both Cordray and CFPB-architect Elizabeth Warren — unless the administration supported reforms to its structure. Those included establishing a commission to run the agency.

"Today's decision to renominate Richard Cordray to be Director of the Consumer Financial Protection Bureau after using an unconstitutional recess appointment is premature, given the outstanding concerns about the bureau and the legal challenge to the recess appointment," Sen. Michael Crapo, R-Idaho, the new ranking member on the Banking Committee, said just moments after Cordray's re-nomination was announced. (President Obama also announced the nomination of former prosecutor Mary Jo White to head the Securities and Exchange Commission.)

"Until key structural changes are made to the bureau to ensure accountability and transparency," Crapo added, "I will continue my opposition to any nominee for director ... If the president is looking for a different outcome, the administration should use this as an opportunity to work with us on the critical reforms we have identified to him."

House Financial Services Committee Chairman Jeb Hensarling, R-Texas, echoed that sentiment, saying he hoped "the decision to re-nominate Mr. Cordray will open the debate about whether some common sense checks and balances will be placed on a massive bureaucracy that is now totally unaccountable to the American people."

Still, some believe Cordray's renomination for the job may draw more support than the administration's first attempt to get him confirmed in 2011, with a few political factors changed and positive reviews of Cordray's performance since he was installed a year ago through a controversial recess appointment.

"It's a new day," said Camden Fine, president and chief executive officer of the Independent Community Bankers of America. "I don't think this is going to be a walk in the park, but I certainly think that Mr. Cordray will get a fair hearing. I don't think that the criticism will be as harsh as it was last time around."

To many, the nomination was surprising. Cordray had given numerous signals he was not interested in a long-term slot and wanted to return to Ohio — where he was the attorney general — after his recess appointment expires at the end of this year to run for governor. Focus instead had shifted to who would succeed the outgoing Raj Date as the CFPB's deputy director. (By statute, the agency's No. 2, who does not need Senate confirmation, would automatically become the bureau's interim leader after Cordray's recess appointment expires.)

But some said his renomination may reflect Cordray's desire to make a more lasting imprint on the still-young agency.

"I wasn't sure he wanted to stay in Washington" but "he may feel that since he started the job that he wants to see it through," said Jeffrey Taft, a partner at Mayer Brown. "He was responsible for getting the agency going, and now he can try to leave a lasting mark."

In his press conference, Obama said Cordray has "proven to be a champion of American consumers."

"Richard has earned a reputation as a straight shooter and somebody who is willing to bring every voice to the table in order to do what's right for consumers and for our economy," Obama said, adding that the Senate should confirm both nominees as early as possible. "Richard's appointment runs out at the end of the year and he can't stay on the job unless the Senate finally gives him the vote he deserves. There's absolutely no excuse for the Senate to wait any longer to confirm him."

Republicans in the Senate still control enough seats to stop any nomination, but Democrats did gain two seats — including the one now occupied by Warren, who will sit on the Banking Committee. Meanwhile, it is unclear exactly how aggressive Crapo intends to be, whereas his predecessor as the panel's ranking member, Alabama's Richard Shelby, has been one of the bureau's most vocal opponents.

Gil Schwartz, a partner at the law firm Schwartz & Ballen, said Obama's reelection leaves Republicans with less political room to fight the nomination.

"It's hard to deny the president a nomination under the circumstance," he said. "I don't think it's business as usual for Republicans. I think they do recognize that sentiment has swung toward his side and the CFPB isn't going anywhere."

Others said while the bureau has accelerated the flurry of rulemakings affecting mortgages and other areas of the consumer financial markets, the CFPB has won credit

from many in the industry for taking a more measured approach than was expected. Cordray is seen as wanting to listen to bankers' concerns.

"The CFPB has been very deliberative," said Ronald Glancz, a partner at Venable. "They've listened to a lot of voices. They're very open and transparent in terms of the way they've gone about their rulemaking. I think Cordray will certainly get credit for that and they've taken the middle of the road in many cases."

But the apparent position of GOP leaders not to budge from their earlier position poses significant obstacles, prompting some to question why exactly Cordray was renominated without any discussion about potential changes to the CFPB's structure.

"I have a hard time thinking the way the process was done that somehow Republicans are going to be a lot more amenable than they were before," said Mark Calabria, director of financial regulation studies at the Cato Institute and a former Senate Banking Committee staffer. "I think one of the reasons for [President Obama] to send this nomination up is purely politics — 'Let's have a fight to illustrate that I care about consumers and Republicans don't.'"

He added that, after Republicans aired their initial concerns about the bureau's single-director leadership, Cordray's recess appointment only stirred the pot further.

"The process of his [first] nomination still irked a lot of people in the way it was done," Calabria said. "Before, he could come in almost on a clean state, but any sort of nomination hearing is going to be about not only what CFPB has done but about the nature in which he was appointed."

Meanwhile, there are still signs many in the industry have concerns.

Richard Hunt, the head of the Consumer Bankers Association, told reporters that, while he has found Cordray to be "very accessible [and] mostly fair", the CBA still believes the bureau should be led by a commission instead of a single director.

"We are one rule from bringing the financial markets into chaos, which is much more likely to happen when you have a sole director versus a commission," Hunt said. "This is time that the Senate takes a pause, reflects and tries to save itself from itself, and have a commission, not a sole director."

Hunt said he expects the renomination to spur talks of a compromise involving the administration removing its opposition to a CFPB commission in exchange for a confirmation vote on Cordray. "You will start seeing some discussion of a possible confirmation in return for a restructuring," he said.

But Taft said that was unlikely. "Both Obama and the Democrats have seemed to communicate that that is not on the table," he said.

Fine said the environment has significantly changed since the first time Cordray was nominated.

"It's a different time now than when he was first nominated. The CFPB has a track record. By any objective standard, the bureau has been more measured in its approach than a lot of people thought it would be," he said.

"There are still some rules that ICBA still has concerns about. That said, it could have been a lot worse. From the standpoint that the bureau does at least seem to be listening, particularly to community bank concerns, that is very encouraging to us."