

# National Journal

## Why Richard Cordray Re-Nomination Fight Won't Be About Richard Cordray

By: Catherine Hollander – January 25, 2013

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President Obama's re-nomination of Richard Cordray to head the Consumer Financial Protection Bureau reignites the battle that raged last year over the structure of the regulatory agency created under the landmark Dodd-Frank financial-reform law.

Republicans have criticized the consumer watchdog agency, which regulates products ranging from home mortgages to credit cards. Their chief complaints center on the fact that the agency is run by a director rather than a board. They also dislike the agency's funding mechanism. The Federal Reserve Board, rather than Congress, allocates money for its operations.

The GOP will use Cordray's confirmation process to rehash these concerns. The politics will mirror the first go-around in 2011. Democrats picked up two Senate seats in November but still fall five short of the 60 that would be needed if Republicans decided to filibuster the appointment. Obama ended up using a recess appointment to install Cordray at the head of the agency last year, bypassing the GOP senators who opposed his nomination.

The White House is bracing for a fight. Asked if the Obama administration was expecting "clear sailing," press secretary Jay Carney told reporters: "I wouldn't want to predict an outcome except to say that there are no objections to him on substance."

He's right. The dispute won't be about Cordray. The credentials of the former Ohio attorney general, who was first nominated in July 2011, have never been the issue for Republicans. He now has a year-long track record at the CFPB, but his approach at the agency has been surprisingly cautious and marked by a focus, at least initially, on the administrative challenges of getting the new agency off the ground. Cordray's agenda, according to Mark Calabria, director of financial-regulation studies at the libertarian Cato Institute, was "exactly the political strategy one would pursue if you're trying to build support" for the agency and soothe fears among key constituencies, such as the financial industry, about the agency's mission.

And indeed, the first round of Republican comments to the news that Obama had selected Cordray to head the agency once again didn't focus on the man, but the bureau. The current structure concentrates power in one person's hands, Republicans say. And they don't like it. "No one person, I believe, should have so much unfettered power over the American people," Sen. Richard Shelby, R-Ala., said at a September 2011 hearing on Cordray's nomination.

Other independent agencies, as Republicans will tell you, are run by boards: The Fed, the Securities and Exchange Commission, the Commodity Futures Trading Commission, to name a few. The CFPB is more of an outlier in that regard (executive departments, such as Treasury, are run by secretaries who are answerable to the president and removable at will).

Sen. Bob Corker, a Republican who sits on the Senate Banking Committee, said he respected Cordray "as a substantive person who has shown thoughtfulness in writing regulation up to now," but said he still disagreed with the agency's structure. The Banking Committee will be the first hurdle in Cordray's confirmation process.

Sen. Mike Crapo, the expected ranking Republican on the Banking Committee, said Thursday that he would oppose "any nominee" to direct the agency unless "key structural changes" were made. "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," Crapo said.

Experts interviewed by *National Journal* said the White House may be forced to give ground on changes to the agency this time around. Cordray can serve until the end of 2013 without being confirmed. His nomination now suggests the White House is prepared for a long fight. The prospect that Obama might once again use a recess appointment to install a director without addressing GOP concerns was dismissed as remote, at least at this point in the process. "I've never heard of anybody being recess-appointed twice," said Oliver Ireland, a partner at Morrison & Foerster who specializes in retail financial services and bank regulatory issues.

"I don't think he'll be confirmed easily unless there's some kind of agreement between Hill Republicans and the White House on the structure of the CFPB and its funding," said Brian Gardner, senior vice president of research at investment bank Keefe, Bruyette & Woods. "I don't think the politics of this have changed all that much. I wouldn't be surprised to see the White House give on the structure, the management structure, changing it from a directorship to a commission."

Appropriations were another issue raised during Cordray's previous confirmation, but Morrison & Foerster's Ireland says that would be a tougher fight. It's more common to be a self-funded agency (the Federal Reserve is one prominent example). And the policy implications are different. "Somebody can legitimately argue, I think, 'Well, we think this ought to be an independent agency and it won't be truly independent unless it's self-funded,'" he said.

The nomination also puts an end to speculation that Cordray would run for Ohio governor. The CFPB directorship is a five-year term, and with the confirmation process expected to be ugly, it's unlikely he'd go through it if he wasn't planning to stay.