VENABLE® LLP

AUTHORS

Allyson B. Baker

RELATED INDUSTRIES

Consumer Financial Protection Bureau Task Force

ARCHIVES

2013	2009	2005
2012	2008	2004
2011	2007	2003
2010	2006	

Client Alerts

July 2013

The Senate's Confirmation of Richard Cordray as Director of the Consumer Financial Protection Bureau and What This Means Going Forward

On July 16, in a bipartisan 66-34 vote, the United States Senate confirmed Richard Cordray to become the Director of the Consumer Financial Protection Bureau. This happened on the eve of the Bureau's second birthday, which is July 21, 2013. The Bureau, which was enacted pursuant to the Consumer Financial Protection Act, Title X of the Dodd-Frank Act, became an official agency on July 21, 2011.

The Senate's confirmation of Cordray will lead to more certainty about the Bureau's direction and structure. Cordray's confirmation ensures two things:

- that he will be the Director of the Bureau for the foreseeable future; and
- that the Bureau's basic structure will not change anytime soon.

Cordray's confirmation will generally make it easier to predict and respond to current and anticipated Bureau action.

The Director of the Bureau serves a five-year term. In the absence of Senate confirmation, Cordray's current term was set to expire at the end of December 2013. In January 2012, President Obama appointed Cordray to serve as Director of the Bureau during a Senate recess. That recess appointment was a source of controversy. Earlier this spring, the Supreme Court granted certiorari to hear arguments in *Noel Canning, a Division of the Noel Corporation v. National Labor Relations Board* in which the U.S. Court of Appeals for the District of Columbia Circuit held that President Obama's recess appointments to the National Labor Relations Board were unconstitutional. This decision indirectly called into question Cordray's recess appointment, which was made in the same fashion and at the same time as the NLRB recess appointments.

The Senate's confirmation of Cordray also makes it increasingly likely that the Bureau will continue to have one director, as provided in the language of the Dodd-Frank Act. There had been wide-spread speculation that in order to ensure that there was a Senate-confirmed head of the agency, the President and Congress might agree to alter the Bureau's one-director structure, transforming the Bureau into a commission, along the lines of the Federal Trade Commission, which has a leadership structure comprised of five commissioners. The Dodd-Frank Act also provides that the Bureau is funded by the Federal Reserve Board, not by the Congress. In an effort to reach a compromise, there also was a less-discussed possibility that the Bureau's funding might become subject to Congressional appropriation. Neither of these compromise possibilities seems likely now.

It also seems unlikely that the Bureau's agenda and stated goals will change significantly. Since January 2012, Cordray has presided over a Bureau agenda that is focused on mortgage origination, mortgage servicing, credit card products, debt collection, debt settlement, and private student lending, among other things. The Bureau continued to pursue its agenda and related initiatives when the Director's status was uncertain. At the Bureau, Staff have always understood and expected that notwithstanding external events surrounding the Director's appointment, statutory requirements, such as promulgating specific rules by a date-certain, establishing a consumer response unit, and implementing a nonbank supervision program, would be met and that agency initiatives would be accomplished. There is no reason to think that the Bureau will change course now.

If anything, Cordray's Senate confirmation will likely solidify the Bureau's agenda and ensure its continuity beyond December 2013. For example, when the Qualified Mortgage and Ability-to-Repay mortgage rules take effect in January 2014, Cordray will still be Director of the Bureau. These rules, which are intended to address certain aspects of the mortgage markets, are considered to be among the most important Bureau actions to date. Cordray will preside over the rules' implementation, as he has presided over their promulgation.

In other instances, the Bureau might even pursue its agenda and stated goals more assertively. Pending questions about the Director's status and the Bureau's structure have been answered – at least for now.

If you have any questions regarding this alert, please contact **Allyson B. Baker** at or 202.344.4708.