

## InfoBytes Special Alert:

### President Nominates Richard Cordray as Director of CFPB

July 24, 2011

On July 17, President Obama announced his intention to nominate Richard Cordray as the director of the Bureau of Consumer Financial Protection (CFPB), which requires Senate confirmation. Mr. Cordray was originally tapped last December to serve as the CFPB's Chief of Enforcement.

#### Cordray Actions as Ohio Attorney General

Prior to joining the CFPB, Mr. Cordray was the Attorney General of Ohio from January 2009 through January 2011. In that capacity, Mr. Cordray brought a number of actions of potential interest to consumer financial services companies, including the following:

- **Loss Mitigation.** Brought suits against three mortgage servicers, alleging that their servicing methods violated Ohio's law prohibiting unfair and deceptive acts and practices (UDAP). Although Ohio had not adopted specific standards for mortgage servicing, and there was no available guidance on the issues raised in the complaint, Mr. Cordray alleged that the servicers had engaged in unfair and deceptive acts and practices by providing inadequate customer service, losing mortgage documents and being insufficiently aggressive in the modification of mortgage loans. Mr. Cordray also claimed that borrowers were forced to enter into abusive agreements in exchange for being able to keep their homes.
- **Document Execution.** Brought suit against a major mortgage servicer under the Ohio UDAP law over its foreclosure activities and affidavit practices. In the suit, Mr. Cordray alleged that the servicer violated the Ohio UDAP statute by having employees sign and file false affidavits in foreclosure proceedings and, among other things, failed to properly supervise employees engaged in the foreclosure process. Mr. Cordray sought penalties of up to \$25,000 for each violation. In conjunction with the filing, Mr. Cordray also sent letters to the other four largest servicers operating in Ohio, publicly requesting a meeting regarding their processes for executing foreclosure affidavits. His office sent letters to local courts seeking their cooperation with his efforts in this area.

#### Political Stalemate

This nomination places Mr. Cordray in the center of a political stalemate, in which critics of the CFPB have called for a revised structure to create greater accountability while proponents have said any change in structure will undermine the new agency's effectiveness. In nominating Mr. Cordray, President Obama made the following statement:

"... There were abuses and there was a lack of smart regulations. So we're not just going to shrug our shoulders and hope it doesn't happen again. We're not going to go back to the status quo where consumers couldn't count on getting protections that they deserved. We're not going to go back to a time when our whole economy was vulnerable to a massive financial crisis. That's why reform matters. That's why this bureau matters. I will fight any efforts to repeal or undermine the important changes that we passed. And we are going to stand up this bureau and make sure it is doing the right thing for middle-class families all across the country...."

However, Senate Republicans have vowed not to allow any confirmation as long as the CFPB, which is largely shielded from the appropriations process, has a single Director and not some form of commission or board, like other independent agencies such as the FDIC, the SEC, the FTC, and the Federal Reserve Board. In response to the nomination, Senate Minority Leader McConnell (R., KY) stated:

"... Senate Republicans still aren't interested in approving any one to the position until the President agrees to make this massive new government bureaucracy more accountable and transparent to the American people. On May 5th of this year, 44 Republican Senators signed a letter to the President stating that `we will not support the consideration of any nominee, regardless of party affiliation, to be the CFPB director until the structure of the Consumer Financial Protection Bureau is reformed.' And we've been very clear about what those reforms would look like. ... We have no doubt that, without proper oversight, the CFPB will only multiply the kind of countless burdensome regulations that are holding our economy back right now, and that it will have countless unintended consequences for individuals and small businesses that constrict credit, stifle growth, and destroy jobs...."

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For a copy of the White House press release announcing the intention to nominate Mr. Cordray, please see <http://www.whitehouse.gov/the-press-office/2011/07/17/president-obama-announces-richard-cordray-director-consumer-financial-pr>. For a copy of the complaints references above, please send an email to [infobytes@buckleysandler.com](mailto:infobytes@buckleysandler.com).

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