



Dodd-Frank: President Obama Installs Richard Cordray as Director of the CFPB

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On January 4, 2012, President Obama installed Richard Cordray as Director of the new Consumer Financial Protection Bureau Financial Protection (“CFPB”). Mr. Cordray had served as Attorney General for the State of Ohio and most recently was in charge of the enforcement division of the Treasury Department. In the latter position, he had also been in charge of the day-to-day functions of the CFPB during the confirmation process. The Director of the CFPB serves a five-year term and can only be removed by the President for cause.

Mr. Cordray failed to be appointed by the Senate last month. Even though Mr. Cordray enjoyed the support of Senate Banking Committee Chairman Tim Johnson (D-S.D.), as well as other influential Democrats, Senate Republicans successfully filibustered the nomination. While most Senate Republicans maintained that they had no problem with Mr. Cordray himself, they said they were using the confirmation process and the filibuster rules to object to a “lack of transparency and accountability” in the basic structure of the CFPB. President Obama circumvented the confirmation process and the rejection of Mr. Cordray’s nomination by using a “recess appointment” to install Mr. Cordray as Director. Recess appointments do not require the consent of the Senate, but the appointee can only serve until the next session of Congress. Senate Republicans are objecting to the legitimacy of the recess appointment, stating that Congress is technically in session.

Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act created the CFPB, effective July 21, 2011. The CFPB is an independent bureau within the Federal Reserve System, and has a broad mandate to “regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws.” The CFPB will have exclusive rulemaking and visitation authority, and primary enforcement authority, over financial institutions with \$10 billion or more in assets, and will have varying degrees of such authority over smaller banks and certain non-bank entities. Many existing consumer protection functions and powers

heretofore residing in other federal financial agencies have been or will be transferred to the CFPB.

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