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BANK THINK

In Election Year, Dodd-Frank's Rollback-Proof

By Mark Olson



MARK W. OLSON

President Obama assured that 2012 would get off to a rousing start when he made a recess appointment of Richard Cordray as head of the **Consumer Financial Protection Bureau**. Predictably, the appointment provoked praise and outrage.

To date, much of the discussion has focused on the constitutional issues raised by the appointment, and the impact of the precedent on president-senator relations, but little has been said about the impact on the banking industry.

Let's assume that the appointment remains in place and consider the implications.

First, and critically important, the substantial new authority conveyed to the new agency by Dodd-Frank will now be available to the new director. The bill specifically limited the agency's new authority until the new director was in place.

In Director Cordray's first speech following the announcement, he made it quite clear that his first priority was to go after the unregulated or under-regulated providers of retail financial products.

Bankers should take this as good news. Many of the most egregious abuses occurred in less regulated markets outside the banking industry.

But bankers still received a disproportionate amount of the blame; as neither the general public nor the mainstream media carefully distinguished bank-generated financial products from nonbank-generated products.

Bringing the nonbank abuses under tighter scrutiny may not immediately improve the banking industry's image, but it will limit the contagion effect of the bad will generated by nonbank providers.

Another possible impact of the appointment is to make bank compliance issues a focus of this year's presidential campaign. Bankers should not think of this potential outcome as good news.

The recent Republican primary debates have generated comments in opposition to the CFPB and the Dodd-Frank Act more generally. Bankers may be lulled into thinking that there is a groundswell of support for repeal of the bill.

These signals are easy to misread. Even the most aggressive legislative initiatives to limit the CFPB (that have gained any traction) have only attempted to change its organizational construct from a bureau to a commission.

Few members of Congress want to go into the next election cycle having voted to repeal "consumer financial protection." A challenger to an incumbent from either party who voted against consumer protection would be sure to make an issue out of that vote.

On a related point, we still hear about bankers who are not preparing to implement provisions based on a belief that the bill, or major portions of it, will be repealed or not implemented.

That approach now seems short-sighted. I am still of a mind that the CFPB's organizational structure will, at some point, change from a bureau to a commission, thus distributing the policymaking authority to five independently appointed commissioners rather than with a single bureau director.

But I see no likelihood of repeal.

An open question is how the recess appointment of the CFPB director will impact the likelihood of other financial regulators receiving Senate confirmation.

As of this writing, the **Federal Deposit Insurance Corp.** and the **Office of the Comptroller of the Currency** are both being led

by acting chairman though the president has nominated new heads for both and the Senate Banking Committee has cleared both.

President Obama also recently nominated a vice chairman of the FDIC. That nomination awaits confirmation.

There are two recent nominees for the **Federal Reserve** Board of Governors who are awaiting confirmation.

At this point, it is not clear if the CFPB appointment will increase or decrease the likelihood of the Senate moving on the other nominations. But these vacancies continue to create uncertainty in financial markets at a time when

the economy is already stagnated.

The only real certainty is that we will have a presidential election in November. Typically in a presidential election year very little controversial legislation gets a serious hearing, to say nothing of achieving passage. This year likely will be no exception. Therefore, not only will Congress not deal with **Fannie Mae** and **Freddie Mac**, both of which are still in conservatorship, but it is also not likely to deal with any legislation to alter the current construct of the CFPB.

Mark W. Olson has been a Federal Reserve governor, chairman of the PCAOB and chairman of the American Bankers Association. He is co-chairman of Treliant Risk Advisors LLC and can be reached at molson@treliant.com.