

The Good, the Bad and the Ugly About Cordray's Appointment as Director of Consumer Financial Protection Bureau

Independent Local Banks Wary of Punitive Regulations More Appropriately Aimed at the 'Too Big to Fail' Megabanks

By CHRISTOPHER L. WILLISTON, CAE

The firestorm of controversy surrounding President Obama's appointment of Richard Cordray to lead the Consumer Financial Protection Bureau was just the latest chapter in a long and complicated story about this new bureau. Parts of the story are good, parts are bad and parts are just plain ugly.

First, the ugly: Many question the President's authority to appoint Cordray while Congress was still technically in session, thus bypassing congressional scrutiny and approval of the candidate. A cursory reading of Cordray's background certainly indicates that he is qualified for the position; the problem is that the agency itself was neither well established nor transparent enough to warrant moving forward with a leadership decision.

In essence, the Consumer Financial Protection Bureau—CFPB for short—now has the power to promulgate new rules with absolutely no congressional oversight and no technical correcting legislation to perfect its governance. Many independent community bankers worry that the CFPB will propose rules that will hurt our customers and stifle our ability to provide competitive and innovative products for small businesses.

Which brings us to the bad. The reason such rules will be considered by the CFPB is that the megabanks' unscrupulous behavior precipitated one of the worst financial crises in our nation's history. These megabanks need strict regulation and overhaul desperately. However, we worry that the rule-makers will paint with a very broad brush and will damage community banks—which neither caused nor profited from the debauchery of the banks now called "too big to fail."

Such rules will likely exact new and heavy compliance costs on smaller community institutions that have historically focused on products consumers need: checking, savings and loans to America's small businesses and farms. Because community banks operate on very small profit margins (unlike the megabanks), these new costs will have to be passed on to consumers in either real-dollar fees or lost convenience. Without the oversight of Congress in ensuring that community banks have a voice in the process, we fear for the worst—an agency with no accountability and no appeal process and the power to punish those covered by its reach.

Finally, there is definitely some good news about the Cordray appointment. When Congress passed the Dodd/Frank Financial Reform Act in 2010 and thus created the CFPB, it was specific that the new bureau had to limit its oversight to traditional financial institutions until a new director was named. The absence of a director was creating a window during which unregulated, nontraditional financial entities such as payday lenders, private student lenders and other financial intermediaries could continue to escape direct oversight and rulemaking of the CFPB. Regulated financial institutions welcome the closing of that window. Consumers deserve responsible notice and disclosure of product features and repayment requirements, and the new bureau will likely ensure just that.

Community bankers welcome additional CFPB oversight of their non-bank and too-big-to-fail competitors. We only hope that the officials at the CFPB recognize that all financial institutions are not the same when it comes to rulemaking, especially without accountability or oversight from Congress.

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Williston is president and CEO of the Independent Bankers Association of Texas, the largest state community banking organization in the nation. The Austin-based group represents more than 2,000 banks and branches in 700 Texas communities with combined assets of \$163 billion