

## CFPB - What's Next?

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Consumer Financial Protection Bureau (CFPB) Director Richard Cordray announced on Wednesday that he will resign from his post on November 30, seven months before the end of his five-year term. This development already is fueling substantial speculation about what is next for the agency.

The vacancy presents the president with an opportunity to appoint a director who shares the administration's views on financial regulation and can put the agency on a different regulatory path. In due course, the president will nominate someone to fill the post permanently, and that person will be subject to Senate confirmation. The CFPB, however, enjoys strong support not only from Senate Democrats, but also in major sectors of the financial consumer community, having, among other things, collected over \$12 billion in consumer restitution. In turn, the nomination and confirmation process for the new director may be difficult, depending in large part on who is nominated for the vacancy.

However, given the CFPB's vast enforcement and rule-making authority, the issues of concern for the financial services industry raised by Mr. Cordray's departure remain real and immediate. There are civil investigative demands (CIDs) being issued every day, investigational hearings (depositions) being taken, examinations being conducted and rules promulgated, and undoubtedly formal enforcement actions in the CFPB pipeline. Those are eggs that a new confirmed director will have difficulty unscrambling in the future.

In the short term, under the Federal Vacancies Reform Act, absent other action by the president, the current deputy director will become the acting director. But, the president instead could appoint an acting director from among the cadre of Senate-confirmed officials in his administration, and that person could serve for at least 270 days, and even longer under some scenarios. Also, a new appointee could hold two positions (but not draw two salaries) and could delegate much of the day-to-day work to a trusted associate who need not be Senate-confirmed.

None of these possibilities would change the essential structure of the CFPB, which the administration has argued in court is unconstitutional. (Read our previous post [here](#).) As we have discussed at length [in other posts](#), however, an acting director could make significant changes simply by adhering to the deregulatory principles relating to enforcement, rule-making, and examination already set forth in official administration position papers. In effect, these changes could materially change the overall regulatory direction of the agency.

But even if these actions are taken, they may be largely for naught in a practical sense. The Dodd-Frank Act expressly authorizes the state attorneys general to bring prosecutions for alleged “unfair, deceptive or abusive acts and practices” (UDAAP) in federal court. While there are some limits on this authority, most of the significant enforcement actions brought to date by the CFPB could be brought by a state attorney general. Those same state attorneys general also have their own state statutes similar to UDAAP and many, particularly Democrats, have obtained significant appropriations from their state legislatures to hire prosecutors to bring cases that the Trump administration will not bring.

While it is hard to imagine the state attorneys general replacing altogether the CFPB behemoth with its arguably unlimited resources, enforcement via the attorneys general will most likely continue unabated and perhaps enhanced.

In sum, the immediate situation thus remains fluid, and we will continue to provide our analysis as developments occur.

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