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Challengers to CFPB Recess Appointment Face Another Hurdle

NCLC Analysis: Consumer Bureau Had Full Power With or Without a Director

WASHINGTON, DC—A new analysis by the National Consumer Law Center exposes another obstacle for payday lenders, debt collectors or others who try to avoid the Consumer Financial Protection Bureau's scrutiny by challenging President Obama's recess appointment of Richard Cordray to be the Bureau's Director. Contrary to popular understanding, the Bureau received its full powers on July 21, 2011, even though there was no director in place, which could make the legality of the Director appointment moot.

"Congress understood when it voted for the financial reform bill that it was giving the Treasury Secretary full authority to operate the CFPB until a director was in place," said Lauren Saunders, managing attorney at the National Consumer Law Center. "But after the bill was passed, many people read an obscure provision of the bill quickly and out of context and assumed that the Bureau's pre-director powers were limited. That reading became conventional wisdom, but it was wrong."

The scope of the CFPB's power before Cordray's appointment is still relevant because courts will normally kick challengers out of court unless they have "standing," a legal concept that means an injury or other direct interest in the case. "Courts will not listen to arguments brought by someone who only has an ideological axe to grind. A payday lender who is trying to escape the CFPB's scrutiny might try to challenge Cordray's appointment, but a judge may be reluctant to hear the case if the CFPB has authority over payday lenders and debt collectors with or without a Director," Saunders explained.

The NCLC issue brief, "The CFPB Received its Full Power on July 21, 2011" is available at http://www.nclc.org/images/pdf/regulatory_reform/issue-brief-cfpb-interim-powers.pdf.

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