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Regulatory: Nomination for director of CFPB blocked

Politics are preventing progress in the consumer financial services industry

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This column is part of a series of articles on the new Consumer Financial Protection Bureau and the upcoming wave of regulations affecting the consumer financial industry.

The 44 Senate Republicans who vowed to block President Obama's nominee to head the Consumer Financial Protection Bureau have succeeded. Last week, a majority of senators voted in favor of approving former Ohio Attorney General Richard Cordray as the new director of the Bureau. Approval, though, required 60 votes in favor of the nominee and Democrats were only able to secure 53.

The vote—53 to 45—was largely along party lines. Sen. Scott Brown of Massachusetts broke Republican Party ranks, choosing not to make support of the Bureau an issue in his re-election campaign against Elizabeth Warren. Warren is widely cited as conceiving of the Bureau and spearheading its creation. Many thought she would be the president's nominee to be the Bureau's first director.

Republican Sen. Olympia Snow of Maine—one of the 44 Republican senators who originally pledged to vote against any nomination for Bureau director until specific changes to the Bureau's structure were made—voted "present" on the motion. Democratic Sen. John Kerry was absent for the vote.

What does a Bureau without a director look like? The same as it has looked since July 21, 2011, when its doors first officially opened for business. With no director confirmed, the Bureau hobbles along with only certain powers. Chief among the Bureau's dormant powers is the ability to regulate non-bank financial institutions like mortgage originators and payday lenders.

Whichever side of the aisle you support, whatever your political beliefs, you have to be scratching your head at the filibustering of the seating for the Bureau's first director. The economy remains in a precarious position. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which gave rise to the Bureau, has been on the books for more than a year. Many of the consumer financial services regulations that the Dodd-Frank Act was expected to spawn, however, have yet to be written and released.

Step back for a minute. What happens when you know something is coming but that is all you know? No one tells you what is coming. No one tells you when it is coming. You are simply told that it is coming. Sounds a little like the plot line to a mediocre horror flick, right? For financial services companies and their customers—the very consumers the Dodd-Frank Act and the Bureau were meant to protect—this Washington-imposed gridlock is its own version of a horror show.

Credit is not flowing as freely as it did before. Credit product development has been stifled and there are many reasons why. Among those reasons is the uncertainty brought about by the Washington-imposed paralysis over the Bureau. Everyone knows there are new regulations coming, but no one knows what they will look like and when they will arrive.

Like other financial products (e.g., insurance, securities), consumer lending is largely about identifying and managing risk. Having a clear view of the regulatory landscape is paramount to effectively managing the risk. When you know what regulations you are subject to, you can calculate your risk and make an informed decision. When the regulations do not exist, but are known to be forthcoming in some form at some point in time, there is no clear view. Rather, the view is cloudy and uncertain.

We should be asking the 44 senators who have held up the nomination: What is more important: clearing up the regulatory landscape so that financial services companies can again navigate the risk and engage in informed business decision-making, or keeping a pledge that polls routinely demonstrate is unpopular even across party lines?

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