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The CFPB and House Republicans Remain at Odds Over Consumer Finance Regulation

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On January 28, 2014, CFPB Director Richard Cordray appeared before the House Financial Services Committee to testify about his agency's fourth Semi-Annual Report. Cordray's written testimony and opening remarks at the hearing focused on the agency's Qualified Mortgage Rule and other new regulations under the Dodd-Frank Act, as well as the CFPB's efforts in the areas of consumer financial literacy and decision-making. Cordray also noted the CFPB's collection of roughly $3 billion in consumer restitution for violations of the financial protection laws.

The hearing was very contentious. Cordray came under fire from House Republicans who questioned him about a variety of topics. For example, committee members asked about the new Qualified Mortgage Rule, which went into effect in January. If a loan meets the standards for a "qualified mortgage" – which include a debt-to-income ratio of no more than 43 percent – then there is a presumption that the lender made a reasonable and good faith determination that the borrower has the ability to repay the loan. If not, then the lender may be subject to liability. Committee members questioned whether the Qualified Mortgage Rule will deter banks from making loans, or even cause mortgage lenders to exit the business altogether. Cordray responded that lenders could still make loans that qualify if they are purchased by a government-sponsored enterprise, and he said that smaller creditors' loans kept in portfolio also get a pass. Notably, he stated that the CFPB would monitor the impact of the Qualified Mortgage Rule on lending markets and would be willing to consider adjustments as needed.

Committee members also criticized the agency's collection of data, asking whether the bureau's data collection practices are threatening consumers' privacy. Cordray responded by explaining that the CFPB collects aggregate data and that much of it cannot be linked to any particular consumer because of the lack of personally identifiable information collected. Other topics of questioning included the bureau's regulation of manufactured housing, the auto finance industry and the cost of renovating the CFPB's headquarters.

Given House Republicans' ongoing criticisms of the CFPB, it was not surprising that the House recently passed H.R. 3193, the Consumer Financial Freedom and Washington Accountability Act, which would make structural and other changes to the agency. H.R. 3193 combines several bills approved in November by the House Financial Services Committee. Among other changes, H.R. 3193 would replace the position of Director of the CFPB with a five-member commission, would change the voting standard for the Financial Stability Oversight Council from a two-thirds majority to a simple majority vote, and would make the agency subject to the congressional appropriations process rather than the current funding system through the Federal Reserve.

The American Bankers Association expressed its support for H.R. 3193, urging House members to pass the bill. According to the association, the proposed five-member commission structure "would provide needed balance and appropriate checks in the exercise of the Bureau's authority." In addition, "[o]versight by Congress would allow the very consumers who the Bureau was designed to protect to hold it accountable through their elected officials."

The Obama Administration issued a statement strongly opposing House passage of H.R. 3193. The White House criticized the bill, arguing that the proposed organizational structure "would significantly limit the agency's ability to respond effectively to the rapid changes in the dynamic consumer financial products and services market." Moreover, "H.R. 3193 would subject the agency's funding to appropriations, dramatically undermining its ability to carry out consumer protections independent of political pressures." The statement indicated that President Obama's "senior advisors would recommend that the President veto . . . H.R. 3193." As a result, the bill's passage by the current Congress seems highly unlikely.