

PUBLICATION

Impasse on CFPB Director Resolved

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One of the most unsettled issues facing mortgage servicers and lenders has been the uncertainty regarding the host of new regulatory rules regarding loan servicing and origination set to go into effect on January 10, 2014. This key issue was whether Richard Cordray's recess appointment as Director of the Consumer Financial Protection Bureau (CFPB) was valid after the decision in *Noel Canning v. NLRB*. In that decision, the Court of Appeals for the District of Columbia ruled that three recess appointments made by President Obama on January 4, 2011 were unconstitutional because the recess occurred while the Senate was in a "pro forma" session. The challenged appointees in *Noel Canning* were members of the National Labor Relations Board. However, the same logic applies to the appointment of Richard Cordray, the director of the CFPB, which occurred on the same day. Mr. Cordray's appointment is being explicitly challenged in other cases, including *State National Bank of Big Spring v. Timothy Geithner*, currently pending in the D.C. District Court. On June 24, 2013, the United States Supreme Court accepted certiorari in *Noel Canning v. NLRB*.

On Tuesday, July 16, 2013, the Senate voted to confirm Mr. Cordray as part of a grand compromise to resolve the ongoing filibuster of certain executive branch appointments. The confirmation of Mr. Cordray appears to effectively validate the new mortgage servicing and lending rules, as Mr. Cordray is expected to ratify his prior actions. The confirmation of Mr. Cordray permits mortgage servicers and lenders to focus their efforts on implementing procedures to comply with the rules by January 10, 2014. However, as the CFPB now has full authority to act, it is expected that the CFPB will initiate more enforcement actions in the future.