Talking Points

Why the Senate Should Move Immediately to Confirm
Richard Cordray to a Full Term as CFPB Director

In a letter to the President, 43 Republican Senators have threatened to once again block Cordray's appointment until Democrats agree to eliminate the agency's independent funding, change it from a single director to a 5-member commission model, pare back its authority and grant other regulators even more authority than they already have to veto its rules. In January 2012, following similar tactics by opponents, the President made Cordray a recess appointment; his term expires at the end of this year unless he is re-confirmed to a full term.

The Senate Should Reject Demands Of a Minority to Hold Cordray's Re-Nomination Hostage to Their Demands for Legislative Changes They Couldn't Make in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010: The establishment of the Consumer Financial Bureau as part of the Dodd-Frank Act was a remedial decision in response to the financial collapses caused by a lack of regulation. The CFPB was designed to have authority over both banks and non-banks, to provide a level playing field for markets for all financial products. Since 2010, industry lobbyists who don't like it have urged Senators to delay, defund and defang it. Uncertainty over the future of the bureau, its director and its powers creates uncertainty in our financial markets and that threatens our fragile economic recovery.

Delaying the Confirmation Creates Uncertainty That Harms the Economy: The bank industry should know that delaying his confirmation -- especially under the specter that a recent "radical" appellate decision could eventually lead to actions to void his recess appointment -- adds uncertainty to the marketplace that confuses industry decisionmaking and hinders its ability to make loans and offer new products that can build the economy. Further, the big banks know that that they lose and predatory payday lenders and other non-banks win because big banks will be regulated by the CFPB regardless of whether it has a confirmed director, while predatory non-bank lenders are only fully regulated with a director in place. That creates an unlevel playing field that harms markets, harms good actors and hurts consumers

No More Playing Politics With Our Pocketbooks: Senators and industry lobbyists who want to change the bureau's structure should stop playing politics with our pocketbooks and let Richard Cordray have a straight up-or-down vote on his re-nomination, so the CFPB can get on with its work and do its job.

- **Most Americans, Regardless Of Party, Support the CFPB:** In a national survey conducted last July, two-thirds (66%) of voters agreed on the need for such an agency. Ninety-two percent expressed support for measures requiring banks, mortgage lenders, credit card companies, and student loan and auto lenders to provide clearer explanations of rates, terms and fees (97% among Democrats, 94% among independents, 85% among Republicans).

- **So Do Small Businesses:** A more recent survey shows eighty-four percent of small business owners (a majority of them Republicans) supporting the bureau.

- **And So Do More and More Financial Industry Leaders:** Even many financial industry leaders have praised it as a fair and reasonable regulator. The president of the Mortgage Bankers Association, for example, recently paid tribute to "the deliberative, inclusive, transparent process" of its work on rules to prevent a resurgence of the unaffordable mortgages that produced the 2008 financial crisis and the foreclosure epidemic.

CFPB Critics Justify Their Demands With Absurd Claims About the Director's "Unaccountable" and "Nearly Unprecedented Powers."

- To prevent political manipulation that puts the banking system at risk, independent funding is a feature of all the bank regulatory agencies (and unlike the others (The Federal Reserve, OCC and FDIC) only CFPB funding has a hard cap). The CFPB's single director structure is not unique, either. The Office of Comptroller of the Currency, or OCC, which is the safety and soundess regulator over the all the nation's national banks, including the vast majority of the big banks, also has a single-director structure. So, half the bank regulators have a commission, the other half have a single director. Some other independent agencies have commission-leadership; some have single directors.

- Moreover, only CFPB rules - unlike those of its peer agencies – can be vetoed by a committee of traditional financial regulators known as the Financial Stability Oversight Council. Its operations are also subject to regular oversight by Congress. Of all bank regulators, only CFPB is subject to additional small business regulatory requirements.

After a Year With Cordray as Director, Such Claims Have Lost All Credibility: As just about everyone who has actually dealt with the CFPB agrees, it has been a model of transparency.

The Recent Court Ruling on Recess Appointments Is No Excuse For a Deal to Weaken the Bureau.

- It's just one court ruling, applying only to the National Labor Relations Board, destined to be appealed, which "contradicts 150 years of practice by Democratic and Republican administrations," as the White House said in a statement.

- The case wasn't about the CFPB at all. It doesn't directly affect the CFPB. Any legal challenges to Cordray's appointment will go forward separately. So far, no court has yet even agreed to hear the one such lawsuit already brought.

- In any event, the CFPB will continue. So will the Dodd-Frank financial reform law, which established the CFPB. The deceptive and abusive practices that created the need for such an agency cannot be revised out of history, nor can the need for Dodd-Frank and the CFPB.

- Even if Cordray's recess appointment were ultimately invalidated, the CFPB's actions would almost certainly stand and the Bureau would go on. With or without a director, it has the statutory authority, at the very least, to supervise banks and exercise all the powers either transferred to the bureau from other agencies or specifically enumerated in Dodd-Frank.

Hypocritical Senators Using the 60-Vote Filibuster Rule to Oppose the CFPB Are Against Using It to Oppose Defense Nominee Hagel: At least two Senators who signed the anti-Cordray letter, John McCain (AZ) and Roy Blunt (MS), have called for a 51-vote rule for Defense Secretary nominee Chuck Hagel. What's the distinction? Senators who vow to block any nominee for director unless the agency is dramatically weakened are misusing the filibuster and the confirmation process to try to reverse an act of the previous Congress, seeking changes they could never achieve legislatively.

While reasonable people can have different views about the best way for any particular agency to be organized, no one could plausibly claim that the CFPB's governance rises to the level of a national crisis, justifying a game of political brinksmanship that is already creating uncertainty that will further delay the economic recovery, undermine consumer protection and leave families at risk. That prospect may help explain why opposition to Cordray is no longer coming from banks, but rather, in large part, from lawyers and lobbyists and extreme political partisans whose own business model thrives on uncertainty.

Richard Cordray Must Be Confirmed – Without Further Delay or Gamesmanship: Senators face a simple choice: allow an up/down vote on this nomination, or open the door to more of the problems the CFPB is trying to prevent – abusive and deceptive banking and lending practices like those that, in all too recent memory, helped bring about an epidemic of foreclosures, saddled millions of Americans with unmanageable debt, and triggered a financial and economic calamity from which the nation is still struggling to recover.