HUDSON COOK

Rich Cordray's Legacy and the Future of the CFPB

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The day after Thanksgiving, Richard Cordray stepped down as head of the Consumer Financial Protection Bureau. I worked with Rich to 'stand up' the Bureau and as a deputy enforcement director. In the summer of 2014, after four years at the Bureau, I decided to leave the agency. I wanted to tell Rich immediately and waited until what I thought was a reasonable hour - 10 a.m. - to call him. He answered in a whisper: "Lucy, Lucy, how are you?" He then explained in a hush that it was 7 a.m. in California, where he was vacationing, and that his family was still sleeping. I was embarrassed to catch him at such an early hour, on his vacation, but he welcomed my call. I then started to tell him my news, only to lose the connection in mid-sentence. I tried back, but it happened again and again. After about four attempts to connect, I stopped trying, not wanting to bother Rich any further. Then he took over, trying several times to reach me and complete our call. Finally, I delivered my news, and then we lost the call again. A few minutes later, I received his text: "So I know it was not optimal to labor thru NINE calls to convey that message, but you will always be special for having taken the risk to make things work for me and the Bureau and I am forever grateful to you. RC." I kept Rich's text, and remember our call, because it reflects on his character and legacy as the CFPB's first director. He has been tireless, dogged, and committed in his pursuits. And in leading the Bureau's staff, he has been supportive, warm, and, yes, funny.

Stepping back, what is Rich's ultimate legacy as the Bureau's first director? He accomplished many things. He took the reins from Elizabeth Warren, who 'stood up' the Bureau initially, and built it up to an agency of 1,600 employees. He completed mortgage rulemakings mandated by Dodd-Frank and discretionary rulemakings - like the payday rule - in his zeal to protect consumers. He oversaw the first federal agency with supervisory authority over both banks and non-banks, including first-time examination authority over the national credit bureaus and larger market players in auto finance, debt collection, and other industries.

Ultimately, though, Rich will be remembered for his keen focus on enforcement. He was given a new agency with enormous enforcement authority, and he wielded that authority forcefully. Rich Cordray joined, and now leaves, the agency with a strong enforcement focus. Before joining the CFPB, Rich served as Ohio's attorney general and, before that, as an appellate litigator. Elizabeth Warren brought Rich to the Bureau to serve as its first enforcement director. When he joined the nascent enforcement team, he jumped into the fray, sprinting to build the enforcement office into a 150-strong team of litigators and investigators. Historically, federal prudential regulators have prioritized their supervisory mission - a confidential, non-public process - over public enforcement actions. As the enforcement director, Rich made sure that enforcement shared equal footing with supervision, integrated within the same division. When Rich became the Bureau director, he continued to prioritize the agency's law enforcement mission. In one of his most controversial moves, he ordered PHH Corporation to pay $109 million in disgorgement, about 17 times the hearing officer's recommendation, and he ruled that no statute of limitations applied in the Bureau's administrative forum. When he announced his intent to leave, his message to the agency's staff emphasized the $12 billion in consumer relief obtained by the agency through its enforcement actions. Rich Cordray's legacy is as an aggressive law enforcer, for better or worse.

With Cordray's exit, should industry breathe a big sigh of relief? While it's too soon to say what comes next, it's safe to say that the CFPB and its dedicated staff are not going away. It's best to take the long view with the CFPB. It's a powerful agency with a host of tools, and it will still find a way to do its job to protect consumers. Under the Trump administration, this likely means more use of the non-public supervisory process and less use of rulemaking. On the enforcement side, I would expect the agency to implement procedural protections for companies under investigation, make more efforts to resolve cases short of litigation, and focus its enforcement might on cases akin to fraud. Companies should not let down their guard, however. Administrations come and go, but the CFPB is here to stay. In the end, the CFPB will look kindly on companies that maintain a strong compliance management system and maybe not so kindly on those that do not.

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