



Senate's "Nuclear Option" Battle Directly Impacts FHFA and CFPB Nominees

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While Chairman Bernanke’s testimony later this week will garner the most attention on Capitol Hill, we believe that it is necessary to highlight the importance of the ongoing “nuclear option” debate as it relates to our coverage. Specifically, in this instance, Sen. Reid is considering a change to Senate rules which would result the 60-vote threshold currently needed to end a filibuster being reduced to a simple majority of 51 votes. The rule change would be targeted solely on non-judicial nominees such as Richard Cordray as CFPB Director and Rep. Mel Watt (D-NC) to become FHFA Director. **While we do not believe that either Rep. Watt or Richard Cordray have the 60 votes necessary to win confirmation under the current Senate rules, these nominations are now directly tied to Senate filibuster debate which will come to a head over the next 24 hours. If Senate Democrats embrace a rule change to the filibuster of non-judicial nominees, then we expect Richard Cordray and Rep. Watt to be confirmed by simple majority votes.**

Background. Senate Majority Leader Harry Reid (D-NV) has indicated that his caucus may embrace the “nuclear option,” a procedural maneuver to change the Senate rules and thereby weaken the Senate Republicans’ filibuster power relating to the consideration of President Obama’s non-judicial nominees. This rule change reduces the current 60-vote threshold for ending a filibuster over a non-judicial nominee to 51 votes. Democrats currently hold 52 seats in the Senate and are usually joined by the 2 Independents. Therefore, if the rules of the game are changed for non-judicial nominees, Senate Democrats will have the votes necessary to advance the vast majority of the President’s non-judicial nominees.

Rep. Watt’s Committee Vote Tuesday, Has Little Practical Meaning. On Tuesday at 10:00am, the Senate Banking Committee will [vote on a number of nominations](#) to agencies including the FHFA, the NCUA, and the SEC. We expect all of the nominees, including Rep. Mel Watt (D-NC) as the nominee to become FHFA Director, to be favorably reported out of committee. If approved on the committee level – which we expect – then Rep. Watt’s nomination would move to the Senate floor for the full consideration of the Senate. We do not believe that the committee vote should be viewed as an indicator of Rep. Watt’s chances for confirmation as the real challenge will be on the Senate floor. As illustrated in the table below, we continue to believe that Rep. Watt is 5 votes short of the 60 votes necessary to end a potential filibuster of his nomination. Still, it is important to note that if Sen. Reid embraces the “nuclear option,” then that 60 vote threshold is changed to 51 votes which would likely result in Rep. Watt being confirmed as FHFA Director.

What Happens if Rep. Watt is Confirmed? Please see [here](#) for our take on how Rep. Watt could impact different sectors within the mortgage market.

Rep. Watt's Nomination Vote Count	
As of July 15, 2013	
Votes Needed	60
Senate Democrats (D)	52
Senate Independents (I)	2
Subtotal	54
D's + I's	54
Sen. Burr (R-NC)	1
Current Vote Count	55
Current Vote Deficit	5

Source: Library of Congress, U.S. Senate websites, Compass Point

What Next? Senators from both parties will be working towards an agreement throughout Monday and will end the day with a 6:00pm meeting in the Old Senate Chamber. The choice of the Old Senate Chamber is meant to foster a sense of nostalgia aimed at deterring a rule change. While we expect to have clarity on whether Senate Democrats will embrace rule changes shortly following the meeting

on Monday evening, the rubber will hit the road from a procedural perspective on Tuesday morning. The Senate is [currently scheduled](#) to take a procedural vote on seven nominations, including Richard Cordray's nomination, on Tuesday morning.

Our Take. We are inclined to believe that Senate leaders will ultimately broker a deal to avoid the “nuclear option” just as they have done repeatedly in the past. Furthermore, we believe that part of Sen. Reid's political calculus had to be impacted by the [news](#) that former Montana Governor Schweitzer – a leading Democrat in Montana – would not run to replace retiring Sen. Baucus (D-MT). This announcement delivers a blow to Democrats' chances of holding onto the Senate majority in 2014 given recent retirement announcements by high-ranking Democrats in Republican-leaning states. Still, the rhetoric regarding the “nuclear option” is more aggressive than at any point in recent memory. **The decision regarding whether Senate Democrats will embrace the “nuclear option” will be made behind closed doors later today and we currently view the likelihood of a rule change impacting non-judicial nominations at even money.**

Takeaway. While we do not believe that either Rep. Watt or Richard Cordray have the 60 votes necessary to win confirmation under the current Senate rules, Sen. Reid is moving towards changing that threshold to 51 votes. If Senate Democrats embrace a rule change to the filibuster of non-judicial nominees, then we expect Richard Cordray and Rep. Watt to be confirmed by simple majority votes. The debate over these rule changes will occur throughout Monday and into Tuesday when the Senate is set to take a procedural vote on 7 nominations (including Richard Cordray, Rep. Watt is not included in this initial set of nominations).

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