Professor Hawkins was quoted in an article posted to HousingWire.com, regarding the possibility that Elizabeth Warren could be a recess appointment to the new Consumer Financial Protection Bureau.

The following article was posted to HousingWire.com on Thursday, May 26, 2011 (available online at http://www.housingwire.com/2011/05/26/elizabeth-warren-and-the-cfpb-%e2%80%94-a-recess-appointment):

Elizabeth Warren and the CFPB — a recess appointment?
By Kerri Panchuk

As the nation heads into a holiday weekend, consumer advocate Elizabeth Warren may be heading into a new job if the president names the Harvard professor director of the Consumer Financial Protection Bureau while the Senate is in recess.

But if the week leading up to Warren's possible appointment is a bellwether of what is to come, it's unlikely a directorship for the Harvard professor will break the controversy that is surrounding her and the CFPB.

When it comes to Warren, the nation and the financial sector are clearly divided, with no middle ground in sight.

This harsh divide played itself out during a House subcommittee hearing on the CFPB Tuesday. While testifying, Warren received a tough grilling from Republican Patrick McHenry, (R-N.C.) The uncomfortable exchange — which focused mostly on Warren's departure time from the hearing — sparked outrage among Warren supporters, prompting organizations like Progressive Change Campaign Committee to launch online petitions, asking the president to make a recess appointment of Warren.

By Thursday afternoon, 151,000 people had signed the online petition, meeting 86% of the organization's 175,000 goal.

Legal analysts say watching the contentious hearing may explain why Warren supporters are pushing for the president to appoint a director without a Senate hearing.

"I think what happened was pretty rare for a member of Congress to accuse someone who is serving the public of lying," said Jim Hawkins, a University of Houston law professor, who has studied the new federal bureau. And the fact that a subcommittee hearing became so contentious was telling. "If you think about it, that was just a subcommittee hearing. It wasn't the full Senate or legislative body."

Warren is equally feared by businesses, banks and even academics who have studied the issue with a consumer perspective. As the top cop of the mortgage finance space, she will have unprecedented power as the agency fleshes out rules outlined to address lending and consumer credit practices in Dodd-Frank.

During a recent House subcommittee hearing on the CFPB, law professor David Evans with the University of Chicago Law School outlined a research report compiled by him and George Mason University Law professor Joshua Wright that raised concerns about the bureau’s effects on borrowers.

In his testimony, Evans warned that "the CFPB could make it harder and more expensive for consumers to borrow money. And for small businesses who often rely on credit cards and other consumer lending products."

He added, "Just because someone puts the words 'consumer protection' in the title of an administrative agency doesn’t mean that’s what it will do."

In a previous HousingWire story, Houston's Jim Hawkins said the financial industry still felt somewhat in the dark about the CFPB and its role.
"I think there are a lot of open issues about what the Consumer Financial Protection Act means," Hawkins said. "The CFPB has been granted three powers to deal with unfair, deceptive and abusive conduct. But 'unfair' and 'deceptive' are concepts included in other laws written by federal agencies. But there are not many laws allowing regulators to stop abusive conduct. We don't know from the statute what 'abusive conduct' means, so the director will really shape how effective the bureau is in response to the abusiveness prong."

At the same time, Hawkins said, "Any answer would be vague (at this point). The abusive standard (in the act) will have to be fleshed out in a hundred different scenarios, and it's hard to figure it out without seeing what the bureau actually does."

What is clear is that the CFPB and the debate over the director role are new and, therefore, subject to suspicion.

"I think what is unique and what is creating the controversy is that there will finally be an agency with the singular purpose of protecting consumers that doesn't have to worry about safety or soundness or other concerns," Hawkins explained. "I guess the other thing that seemed clear is that there is a definite agenda. The theoretical articles written before the CFPB was created had scenarios of what Warren considered abusive acts, so it will hit the ground running."