The Daily Dish

Washington Gets Weirder

DOUGLAS HOLTZ-EAKIN | NOVEMBER 28, 2017

Eakinomics: Washington Gets Weirder

Just when you thought that was not possible, the Control Freaks Possession Battle (CFPB) broke out over who is running the Consumer Financial Protection Bureau (the real CFPB). To recap, CFPB Director Richard Cordray announced his (abrupt) resignation and appointed as Acting Director Leandra English, who had been his Chief of Staff. In doing so, he cited the Dodd-Frank Act — the financial reform law that created the CFPB — as dictating the legal channel of succession. Simultaneously, President Trump appointed sitting Office of Management and Budget Director Mick Mulvaney as the CFPB Acting Director. In this case, he cited the Vacancies Reform Act; it permits the lateral transfer of any Senate-confirmed appointee to a new position without re-confirmation.

I have no idea who is right, but chaos reigns. English filed a lawsuit to stop the president's appointment. Mulvaney beat her to the CFPB offices — donuts in hand (good move) — and fired off an agency-wide email ordering employees to ignore directives from English.

To some in the media, this is a personality driven vendetta against the originator of the CFPB, now-Senator Elizabeth Warren. Perhaps. But the real problems with the CFPB are structural and the succession battle is exactly what happens when Congress creates an agency with insufficient accountability. Unlike a normal agency, the CFPB does not operate on an appropriation from Congress, which permits Congress to exercise some control over the activities of the agency. The CFPB simply scoops what it needs out of the Federal Reserve's coffers. Convenient.

The powers of the CFPB are not invested in a commission (like, for example, the Federal Trade Commission (FTC) or the Securities and Exchange Commission (SEC)). They are solely invested in the Director of the CFPB, which is why the stakes are so high in the fight for control. Had there been, for example, a three-person commission with representation from both parties, then the resignation of Director Cordray would have produced a temporary transition to the other members and, likely, a deadlocked vote count. Nothing would happen or be at stake.

As originally drafted, the dictatorial CFPB Director could not be fired at will by the president, unlike all other executive agency heads. #Bad. (This may not survive a separate legal challenge.)

The CFPB was created to "protect consumers" even though there was already an agency charged with doing so (the FTC) and a consumer protection effort from the Federal Reserve and other financial regulators. That is the tipoff that the real mission of the agency was to "get" financial institutions. It is a mistake to give up the principle of innocence until guilt is proven, and the CFPB is a testament to that.

In short, the problem is not who runs the CFPB. The problem IS the CFPB, and the desperate need for reform remains as true today as the day it was created.