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The Single Director Structure of the CFPB Needs to Change

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At times the CFPB can take actions that appear very aggressive. To fully realize the agency's power and ability it helps to understand their formation and their structure, and to remember that the CFPB was specifically organized to operate with as little oversight as possible – which makes it powerful and independent from the start. Upon creation, the agency was placed under the Federal Reserve and given a budget that is derived from a fixed percentage of the Federal Reserve's operating expenses. This effectively keeps the CFPB from having to appear before Congress for any funding oversight. Then it was given an organizational structure that has the entire bureau reporting to a single director, which was presumably meant to help the CFPB avoid the delays and compromises inherent in organizations led by commission.

The single director structure of the CFPB has been contested in Washington from day one. In 2011, before the CFPB assumed any of its powers, Elizabeth Warren argued for the structure, stating, "The work facing the new bureau is very challenging; additional restrictions would undermine the consumer bureau before it even begins its work of protecting American families." She was claiming the tasks that await the CFPB were seemingly insurmountable and would only be hindered if decisions had to go through a committee rather than a single person. Later, when Richard Cordray was being put through the confirmation process, Republicans stepped in and argued they would block any nominee for the post if the CFPB's structure was not changed to accommodate a five-member bipartisan commission as opposed to a single director. Obviously, they did not follow through.

Those who advocate for switching the CFPB to one with a commission argue that the efforts would give the work the CFPB does a longer lasting effect, given that the rules drafted by the agency under the guidance of a commission would be bipartisan and therefore would not be a target to tear down after a change in power. The CFPB's current shape happened under a Democratic president and a Democratic-controlled Congress. Richard Cordray was nominated by the same Democratic president. When Cordray's term is up and a new nomination is sought, if Republicans are in power, a director with sharply different views and priorities will be nominated. And if the Bureau's current single-director structure stands, the incumbent could unravel whatever progress has been made thus far.

The Republicans are not waiting to see if they can retake the White House. The most current attack on the structure is coming from Rep. Randy Neugebauer (R-TX), Chairman of the Financial Institutions and Consumer Credit Subcommittee. He has sponsored a bill (H.R. 1266 Introduced on 03/04/2015) that would change the structure of the CFPB's leadership to a commission composed of five members who would be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States, and have strong competencies and experiences related to consumer financial products and services. The members of the Commission would serve staggered terms, which initially would be established by the President for terms of one, two, three, four and five years respectively.

The idea of a commission for leadership at a regulator is not a novel one. The Federal Trade Commission, the Securities and Exchange Commission, the Commodities Futures Trade Commission and the Consumer Product Safety Commission all have bipartisan leadership; the latter was even the model for Elizabeth Warren when she was creating the CFPB.

Outside of the political issues, the single-director structure enables the CFPB to create issues such as those raised in the action against PHH Corp (PHH). In 2014, the CFPB's enforcement division levied charges against PHH and the matter went to hearing in front of an administrative law judge (ALJ) in the Office of Administrative Adjudication (OAA), an independent judicial office within the CFPB. The ALJ held that PHH's actions were in fact in violation of the Real Estate Settlement Procedures Act (RESPA) and levied a $6.4 million fine. PHH then appealed. Appeals of ALJ findings in the CFPB are heard by Director Cordray himself, who reviewed the matter and not only sided with the CFPB but increased the penalty to $109 million and confirmed a new interpretation of the law which is at the center of the case. Proponents of a restructuring of the CFPB believe a result such as this would not be likely if the Bureau was led by commission. PHH is now appealing to the United States Court of Appeals for the District of Columbia Circuit.

It seems readily apparent that even if you bought into the argument that the CFPB needed to be created as single-director organization to overcome the herculean task of centralizing the regulatory and enforcement responsibilities of all consumer financial laws, they have now done so and the benefits of having the Bureau report to a commission far exceed any criticisms. The delays and compromises inherent with a regulatory body may not be a bad thing. It may be exactly what the CFPB needs to create a long lasting bureau that is reasonably handling their duties.