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FDIC Chairman McWilliams Is Wedged In A Political Power Play

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A few weeks ago I wrote about a Center for American Progress (CAP) opinion piece that called for “new leadership at the FDIC.” The author, CAP’s Todd Phillips, wants FDIC Chairman Jelena McWilliams out because she abstained from voting on the Financial Stability Oversight Council’s (FSOC’s) report on climate-related financial risk.

Phillips pointed out that “the other members of the FDIC’s board of directors have the inherent authority to take control of the agency; they need only to demonstrate the will to do so.” He then mentioned that the board members “could even remove the FDIC’s chief of staff if they did not trust him to implement these efforts.”

Of course, at the time Phillips wrote the op-ed, there was nothing to implement. And, December 14, 2021 was CFPB Director Rohit Chopra’s first public meeting as an FDIC Board member.

Still, it is not incredibly unusual for policy advocates in Washington, D.C., to argue for new leadership or direction at agencies, so it was easy to chalk that piece up to business as usual inside the beltway. Late last week, though, the other FDIC board members revealed this whole affair for what it really is: A well-coordinated hyper-political power struggle.

Two of those board members, Consumer Financial Protection Bureau (CFPB) Director Rohit Chopra and former FDIC Chair Martin Gruenberg, announced that the FDIC board had “approved a Request for Information and Comment on Rules, Regulations, Guidance, and Statements of Policy Regarding Bank Merger Transactions.”

There’s nothing strange about the FDIC approving a request for information, or even proposing a rule, on any financial regulatory topic. The Biden administration, rightfully so, has all the authority it needs to take such actions.

But the clue that something else is up is that Chopra and Gruenberg made the announcement on the CFPB’s website instead of the FDIC’s website. A few hours later, the FDIC posted a conflicting statement on its website, stating that:

Earlier today, the Consumer Financial Protection Bureau (CFPB) posted on its website a document, purportedly approved by the FDIC, requesting comment on bank mergers. No such document has been approved by the FDIC.

It seems strange that anyone in the administration would pick such a fight over a request for information. Still, if things keep going, the issue appears destined to end up in court, and the fight could ultimately be over whether the FDIC Chairman controls the agency's agenda.

The statute is not perfectly clear, and neither are the FDIC's bylaws. Otherwise, there would be no story here at all. And nobody on the progressive side seems to recognize that what they're doing is rather short-sighted.

CAP's Todd Phillips believes that "[t]his is going to be a bruising fight between Chairman McWilliams and the three progressive directors." He was absolutely giddy on Twitter, where he noted that "With McWilliams (R) unable to control the FDIC's agenda, the other Directors (Ds) can issue climate guidance, enact strong, prudential regulations, stop unlawful bank mergers, [a]nd so, so, so much more!"

Aside from the fact that any administration can do these things through its regulatory agencies, a major problem here is that McWilliams did not try to block the request for information. Or anything else. According to American Banker, senior FDIC officials "claimed that McWilliams had directed her agency's staff to develop the request for information through its typical channels."

So, two Board members have picked a fight – over a request for information, of all things, that wasn't even blocked – to essentially give control of the FDIC to the head of a separate regulatory agency.

Good luck convincing any members in the next term that this is how Congress intended the FDIC to run.

Even if pushing this fight does not spawn major structural change to the FDIC Board in the future, the strategy needlessly exposes the agency to partisan politics. And if Republicans want to play the same game, Democrats will be on the losing side. (In all likelihood, the administration is not interested in firing McWilliams because the FDIC board is prohibited from having more than three members from one political party.)

One would think that elected officials on both sides of the isle would want to stop this sort of nonsense because regular Americans lose in both instances. So far, though, few Democrats are speaking out.

In fact, senator Sherrod Brown (D-OH), the Chairman of the Committee on Banking, Housing, and Urban Affairs, released his own statement praising the FDIC Board for moving ahead "with this process" to help Americans "better understand consolidation as it results in the loss of bank branches and other financial services."

The fact that Brown's statement simply refers to "this process" at the FDIC solidifies that this affair is hyper-political. It is very difficult to disagree with Brown's counterpart on the committee, senator Pat Toomey (R-PA), who referred to this episode as "a radical politicization of a long-respected financial regulator."

There simply is no good reason for Chopra, Gruenberg, or anyone else in the administration to refuse to engage with McWilliams through the regular FDIC process. It has created a terrible look for the administration – ganging up on a Senate-confirmed FDIC chairman who happens to be the only female on the Board – for little apparent gain. They already have the majority.

Chairman McWilliams has always upheld the law and faithfully executed the duties of her office, and there is no reason to believe that she would ever do anything else.

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