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Dear Colleague,

I am writing today to urge you to vote against the nomination of Kathy Kraninger to serve as the Director of the Consumer Financial Protection Bureau (CFPB). Despite being nominated to serve as the country's top consumer protection official, Ms. Kraninger has admitted she has no relevant consumer finance experience. She has testified that she "cannot identify any action that [Interim CFPB] Director Mulvaney has taken with which I disagree"[1]—a full-throated endorsement of Mr. Mulvaney's anti-servicemember, anti-senior, and anti-student tenure at the CFPB. Furthermore, as an official at the Office of Management and Budget (OMB), she was responsible for implementing the Trump Administration's child separation efforts at the Southern border and its catastrophic response to Puerto Rico's recovery from Hurricane Maria. A vote to confirm Ms. Kraninger to a five-year term as CFPB Director is a vote to defang the consumer watchdog that returned nearly $12 billion to consumers before Mr. Mulvaney assumed control.[2]

The remainder of this letter provides a detailed review of Mr. Mulvaney's one-year tenure at the CFPB—the track record Ms. Kraninger has endorsed without reservation. This review shows that Mr. Mulvaney has:

- Eroded CFPB enforcement efforts by failing to effectively penalize companies that violate consumer protection laws and overseeing a significant decline in CFPB enforcement actions.

- Turned the CFPB—created as an independent, non-partisan watchdog—into a politicized and biased regulator that is more aligned with corporations and campaign donors than consumers.

- Decimated agency enforcement tools by freezing data collection, limiting agency funding, and threatening to eliminate key consumer complaint data that the public uses to get help with their consumer problems and avoid problematic companies.

- Dismantled civil rights protections by failing to enforce laws designed to prevent discrimination by financial institutions.

The letter also addresses concerns about Ms. Kraninger's time at OMB and her role in managing some of the Administration's most galling and inept efforts.

Ms. Kraninger Would Perpetuate Interim Director Mick Mulvaney's Efforts to Turn the CFPB into a Weak and Partisan Regulator of the Financial Industry

Ms. Kraninger has wholeheartedly endorsed Mr. Mulvaney's efforts at the CFPB over the last year. A careful review of that record shows that Mr. Mulvaney has turned the agency from a tough and effective non-partisan consumer watchdog into a highly partisan regulator that regularly puts the interests of financial firms and former Mulvaney campaign donors over those of working families.

Congress created the CFPB after the 2008 financial crisis as an independent executive agency tasked with enforcing consumer protection laws. In the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), Congress designed the CFPB to be a nonpartisan agency. Like other banking regulators, the CFPB is funded outside the appropriations process. And the Senate-confirmed CFPB Director, who is removable only for cause, was the sole political appointee at the agency.

Under the Bureau's first Director, Richard Cordray, the Bureau prioritized apolitical enforcement actions designed to promote the wellbeing and financial stability of hardworking Americans. In the words of the agency's former student loan ombudsman, "[f]or nearly seven years…[the] agency served no party and no administration; the Consumer Bureau focused solely on doing what was right for American consumers."[3] This nonpartisan approach got results: the Bureau has returned $12.4 billion to more than 31 million consumers as a result of its enforcement actions.[4]

But since taking charge of the agency a year ago, Mr. Mulvaney has brought in more than a dozen political appointees and undermined the agency's basic consumer protection mission.

1. <u>Under Interim Director Mulvaney's direction, the CFPB has drastically slowed, and in some cases, stopped, its enforcement of consumer protection laws.</u>

Rather than aggressively enforcing consumer protection laws, Mr. Mulvaney has slowed and, in some cases, halted routine enforcement activities, leaving consumers vulnerable to corporate wrongdoing.

The primary function of the CFPB is to "enforce Federal consumer financial law."[5] Yet one of Mr. Mulvaney's first actions when he took control of the CFPB was to stop the agency's enforcement activities dead in their tracks. For the first 135 days of Mr. Mulvaney's tenure, the CFPB did "not record[] a single enforcement action against banks, credit card companies, debt collectors or any finance companies whatsoever."[6] Overall, enforcement activity in 2018 is a mere fraction of prior years' activity: in the first three quarters of 2018, the CFPB took just 6 enforcement actions, compared with 56 in 2015, 42 in 2016, and 32 in 2017.[7]

Meanwhile, when the CFPB has penalized corporate offenders, Mr. Mulvaney has sought weaker settlements than those pursued by former Director Cordray.[8] In some cases, the CFPB excused companies and individuals from paying fines by citing their financial situations—a practice that was only used in the past to maximize restitution to victims.[9] In July, for example, the CFPB reduced a fine for payday and auto lender Triton Management Group by over $1 million based on the company's purported "inability to pay."[10] In other cases, such as the agency's action against debt collector National Credit Adjusters, the CFPB did collect fines but did not require companies to provide restitution to victims.[11] When the Bureau did require restitution, they sometimes allowed financial institutions to impose onerous requirements on consumers claiming relief. An April 2018 settlement between the CFPB and Wells Fargo, for instance, prevents consumers from receiving restitution unless they can demonstrate "economic or other cognizable harm"—harm that will be adjudicated by Wells Fargo, not the CFPB or another federal regulator.[12]

Mr. Mulvaney has also taken steps to weaken the CFPB's role in enforcing the bipartisan Military Lending Act (MLA), a law designed to protect servicemembers and their families from predatory lenders.[13] Since its inception, the CFPB has used its supervisory authority to conduct routine examinations to ensure compliance with MLA requirements. Yet in August 2018, reports surfaced that Mr. Mulvaney planned to "scrap the use of so-called supervisory examinations of lenders" under the MLA, "arguing that such proactive oversight is not explicitly laid out" in the MLA's legislative text.[14] This legal interpretation reflects a willful misreading of the MLA and Dodd-Frank[15] and could severely damage the wellbeing of servicemembers and their families.

In addition, Mr. Mulvaney failed to take action against Equifax after the company placed the personal data of over 140 million Americans at risk. The CFPB has clear supervisory and enforcement authority over large consumer credit reporting agencies, including Equifax.[16] In the six months following the breach's announcement, the CFPB received more than 20,000 complaints from consumers about the impact of the breach, problems with the Equifax response, or other issues with the company.[17] Within weeks of the breach announcement, then-CFPB Director Richard Cordray announced an investigation into Equifax.[18] Since taking over the CFPB, however, Mr. Mulvaney has failed to file an enforcement action against Equifax. According to public reports, Mr. Mulvaney "put [the] Equifax probe on ice" and "rebuffed bank regulators at the Federal Reserve, Federal Deposit Insurance Corp and Office of the Comptroller of the Currency when they offered to help with on-site exams of credit bureaus."[19]

2. <u>Interim Director Mulvaney has turned the CFPB into a partisan, biased regulator, benefitting his campaign donors and political cronies at the expense of consumers.</u>

After his appointment, Mr. Mulvaney described an explicitly political vision of the CFPB, in which he would "try to marry [a branch's] senior staffer…up with a political position" for "every major branch of [the] CFPB."[20] Mulvaney has since hired more than a dozen political appointees,[21] including six senior officials to run the day-to-day operations of the CFPB.[22] These political appointees reflect a flagrant reversal of the CFPB's past apolitical culture and a departure from the practices of other independent financial regulators.

Mr. Mulvaney has also acted to benefit his former campaign donors at the expense of consumers. In remarks to the American Bankers Association on April 24, 2018, Mr. Mulvaney made troubling and telling comments describing how he favored political donors in his Congressional office. He stated:

> We had a hierarchy in my office in Congress. If you're a lobbyist who never gave us money, I didn't talk to you. If you're a lobbyist who gave us money, I might talk to you.[23]

It is not clear if Mr. Mulvaney continues to engage in these unethical practices, but the agency's actions, particularly its dramatic shift away from enforcing the laws against predatory payday lenders, clearly indicate his priorities. Payday lenders were significant contributors to Mr. Mulvaney during his time in Congress, giving his campaigns a total of nearly $66,000.[24] Since taking control of the CFPB, Mr. Mulvaney has halted implementation of the CFPB's historic "payday rule" and dismissed a case against multiple predatory payday lenders.[25]

Other prominent actions taken by Mr. Mulvaney at the CFPB have lined up neatly with the priorities of his campaign donors. For example, Mr. Mulvaney announced that he would remove the public narratives from the CFPB's consumer complaint database—long a top priority of the American Bankers Association, which donated $32,500 to Mr. Mulvaney's political campaigns, and the Credit Union National Association, whose PAC contributed $30,000 to his campaigns.[26] Though Mr. Mulvaney has yet to remove these narratives, if he or his successor were to do so, it would represent a win for corporate lobbyists at the expense of consumers.

Furthermore, nearly three months ago, Mr. Mulvaney made an appearance at a "closed-door event in New York City," where he met with "party officials and donors," along with Republican National Committee Chairwoman Ronna McDaniel, rewarding them with his insider take on the upcoming elections and on particular candidates.[27] By custom, independent agency heads—financial regulators in particular—steer well clear of campaign or donor-related activity. There are no examples of Mr. Mulvaney's immediate predecessors at OMB or CFPB, or of any top SEC, Commodity Futures Trading Commission (CFTC), Federal Deposit Insurance Corporation (FDIC), or Federal Reserve official, engaging with partisan political donors on campaign-related issues. Mr. Mulvaney has, so far, refused to answer any questions about his travel to and behavior at this meeting.[28]

3. <u>Interim Director Mulvaney has decimated the CFPB's resources and enforcement tools, making it easier for corporations to cheat consumers.</u>

The CFPB's ability to protect consumers rests on its use of high-quality data, its ability to collect and act on consumer complaints, and its access to the funds it needs to run efficiently and effectively. Since the beginning of his tenure at the CFPB, Mr. Mulvaney has taken steps to reduce the agency's access to resources—restricting its ability to meaningfully defend consumers from predatory practices.

Dodd-Frank mandates the CFPB examine financial institutions[29] and bring lawsuits to enforce federal consumer financial laws[30]—actions that rely heavily on the collection and use of data. Yet, within days of taking office, Mr. Mulvaney instituted an unnecessary and chaotic data freeze, effectively halting investigative activity at the Bureau for weeks. When he announced the data freeze, Mr. Mulvaney cited reports published by the CFPB Inspector General to justify his action.[31] But the findings of these Inspector General reports did not support his claims: they revealed that the agency's cyber-security policies were robust, outperforming those of several other agencies performing similar supervisory or enforcement functions.[32] At the time of this announcement, my staff obtained internal CFPB documents showing that the freeze in data collection fundamentally changed how the CFPB interacted with its regulated entities.[33] After six months—when it became clear that Mr. Mulvaney could no longer justify his claims—he lifted the freeze on the collection and use of personal information.[34]

In addition, Mr. Mulvaney requested no funding for the agency in in his FY2018 Budget. Dodd-Frank mandates that the Federal Reserve "transfer to the Bureau…the amount determined by the Director to be reasonably necessary to carry out the authorities of the Bureau under Federal consumer financial law."[35] The CFPB has historically maintained a reserve budget "to provide a source of funds…for unexpected situations, such as sudden increases in expense, one-time unbudgeted expenses, unanticipated delays in funding, and uninsured losses."[36] A GAO report that examined the financial management of several agencies funded outside of the appropriations process concluded that "if the reserve balances are too low, [the CFPB] could risk being unable to conduct [its] statutory mission[]."[37] However—in yet another attempt to weaken the CFPB—Mr. Mulvaney sent a letter to the Federal Reserve requesting $0 for the agency's budget for FY2018 Q2.[38] This failure to request funds did not force the agency to shut down or stop its work, but it did require the agency to spend down its reserve budget—risking its ability to protect consumers.[39]

Mr. Mulvaney also threatened to make the CFPB's consumer complaint database private. The database, which has received over 1.5 million complaints since its launch, allows consumers who opt-in to "be heard by financial companies, get help with their own issues, and help others avoid similar ones."[40] Consumers can submit complaints online or via a CFPB hotline. In addition to helping consumers fix their individual issues with financial companies, the complaint database helps others. The CFPB uses complaint data to identify systemic problems, "help with [their] work to supervise companies, enforce federal consumer financial laws, and write better rules and regulations."[41] The CFPB also passes complaint information to federal agencies, state regulators, and Congress—providing regulators across the country with the information necessary to protect consumers from harm.[42]

In a speech delivered to the American Bankers Association earlier this year, Mr. Mulvaney reportedly suggested to the 1,300 bankers gathered at the conference that he "intends to make the consumer complaints private."[43] Mr. Mulvaney has not announced any final action—but if he or the next CFPB Director were to make the database private, it would remove a critical consumer protection tool and reduce transparency in the financial marketplace.

4. Under Interim Director Mulvaney, the CFPB has dismantled critical civil rights protections while promoting a political appointee with a history of racially provocative statements.

The CFPB is statutorily obligated to ensure that "consumers are protected…from discrimination."[44] Yet under Mr. Mulvaney's leadership, the CFPB has reneged on its responsibility to protect minority and underserved consumers from harm. Instead, the agency has crippled its enforcement of antidiscrimination laws, rolled back critical antidiscrimination protections, and hired a political appointee with a troubling history of racially-charged statements to spearhead the agency's antidiscrimination work.

Dodd-Frank explicitly directed the CFPB to establish an Office of Fair Lending and Equal Opportunity (the Office of Fair Lending) to help protect consumers from discrimination.[45] The statute provides that "[t]he Office of Fair Lending and Equal Opportunity shall have such powers and duties as the Director may delegate to the Office, including providing oversight and enforcement of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities."[46] Yet Mr. Mulvaney stripped the Office of Fair Lending of its oversight and enforcement authorities by moving it from the CFPB's Supervision, Enforcement, and Fair Lending Division to the CFPB Director's Office.[47] In an email to staff announcing the reorganization, Mr. Mulvaney emphasized that the Office would focus on "advocacy, coordination and education," rather than on meaningful enforcement and supervision.[48] And since Mr. Mulvaney took control of the agency, the CFPB does not appear to have filed a single fair-lending enforcement action.[49]

In addition, the CFPB has worked to roll back critical antidiscrimination protections established by the Home Mortgage Disclosure Act (HMDA) and the Equal Credit Opportunity Act (ECOA). In the past year, the CFPB has limited data collection under HMDA, in spite of the critical role that HMDA data plays in the prevention of redlining and other discriminatory housing actions. The CFPB announced in late 2017 that it would reexamine HMDA reporting requirements and would not assess penalties against mortgage lenders for any errors in data collected in 2018.[50] The move was hailed as a "big win for the mortgage industry, which has repeatedly asked for a so-called safe harbor from HMDA reporting errors."[51] Meanwhile, the CFPB has championed the repeal of ECOA enforcement guidance and indicated that it is reconsidering its approach towards "disparate impact liability," a significant part of the federal government's longstanding interpretation and enforcement of ECOA and other antidiscrimination laws.[52]

Finally, Mr. Mulvaney hired, and has retained Eric Blankenstien as a senior political appointee tasked with enforcing antidiscrimination laws at the CFPB, even after reports surfaced that he made "a series of racially provocative comments spanning the last 14 years," including suggesting that most hate crimes are hoaxes, that false birther claims against President Obama are not racist, and that the n-word was not racist. [53] Mr. Mulvaney took this position even after much of the agency's senior career leadership spoke openly about their lack of confidence in Mr. Blankenstein,[54] and the National Treasury Employees Union, which represents CFPB employees, took the unprecedented step of calling Mr. Blankenstein unfit for leadership.[55]

Ms. Kraninger's Own Record Demonstrates that She is Unfit to Lead the CFPB

Ms. Kraninger is a senior political appointee at OMB. She has spent more than a decade working on homeland security policy in the Executive Branch and on Capitol Hill.[56] She has never worked as a regulator or on consumer protection issues, either in public service or in the private sector.[57]

Even though the White House championed Ms. Kraninger's experience as a manager when announcing her nomination—claiming she "will bring…much-needed management experience [to the CFPB]"[58]—her tenure at OMB has been marred by systemic management failures. As an OMB official with primary responsibility over the Department of Justice and Department of Homeland Security (DHS), Ms. Kraninger was one of the officials responsible for managing and implementing President Trump's "Zero Tolerance Policy," which directed all U.S. Attorneys serving in districts along the U.S.-Mexico border to criminally prosecute cases of attempted illegal entry or illegal entry that are referred by DHS.[59]

The policy resulted in a humanitarian catastrophe in which thousands of children were torn away from their parents.[60] The policy received bipartisan condemnation: Republicans described it as a "hot mess"[61] that was put in place with "no preparation,"[62] while Democrats highlighted "reports of chaotic attempts to reunify parents and children."[63] The Trump Administration missed a court-mandated deadline to reunite children and their parents, and over 100 families remain separated as of last month.[64] The policy is expected to have a lasting effect on affected children: experts believe that separation at such a young age will cause lifelong psychological trauma.[65]

In addition, Ms. Kraninger failed to ensure an adequate, timely response to three catastrophic hurricanes in 2017. Under Ms. Kraninger's leadership, OMB's budget requests in the wake of Hurricanes Irma, Maria, and Harvey were far too slow and far too small.[66] Finally, Ms. Kraninger oversaw a budget that, if enacted, would have exacerbated, rather than alleviated, the nation's affordable housing crisis.[67]

The Senate Should Reject Ms. Kraninger's Nomination

Congress created the CFPB because inadequate consumer protection helped set the stage for the worst financial crisis in generations. The Bureau did its job for the first five years of its existence, returning nearly $12 billion to consumers who were cheated and helping resolve hundreds of thousands of consumer complaints[68]—all while providing regulatory certainty and targeted rules that allowed the banking industry to make record profits.

Mick Mulvaney has reversed course at the agency during his year-long tenure as Interim Director. If Ms. Kraninger is confirmed to a five-year term, she would continue Mr. Mulvaney's efforts to undermine the agency's consumer protection mission and return to the pre-crisis approach towards consumer protection that cost millions of working families their homes, jobs, and savings.

I respectfully urge you to vote no on Ms. Kraninger's nomination.

Sincerely,

Elizabeth Warren
United States Senator

Endnotes

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