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November 27, 2017

Don McGahn
White House Counsel
1600 Pennsylvania Avenue
Washington, DC

Mick Mulvaney
Director
Office of Management and Budget
725 17th St. NW
Washington, DC 20503

Dear Mr. McGahn and Mr. Mulvaney:

I am writing regarding the rules and guidelines associated with Mr. Mulvaney's dual appointment by President Trump as Acting Director of the Consumer Financial Protection Bureau (CFPB) and Director of the Office of Management and Budget (OMB).

I also served in a dual role during the early days of the CFPB, as both an Assistant to the President and Special Advisor to the Secretary of the Treasury on the CFPB. Because of this dual role, I worked carefully with White House Counsel to ensure that I followed appropriate laws and rules with regard to conflicts of interest and ethics, agency and White House recordkeeping, and other important issues. I am concerned that Mr. Mulvaney and his staff may not be following all appropriate procedures.

I believe the language of the Dodd-Frank law is clear and that Leandra English, not Mr. Mulvaney, is the legal Acting Director of the agency. But regardless, to the extent that Mr. Mulvaney and any other OMB staff are presently at the CFPB, this raises a number of important questions about how they are handling this dual role.

I have provided my questions below. I am hopeful that you have already considered and addressed these issues, and that it is a pro forma matter to answer them immediately. I therefore ask that you provide me with answers no later than December 4, 2017.

OMB Staff Serving at CFPB

In addition to Mr. Mulvaney, it appears that other OMB staff have also accompanied Mr. Mulvaney to the CFPB. John Czwartacki, who is the Director of Communications at OMB, appeared to be shadowing Mr. Mulvaney during his day at the CFPB. Mr. Czwartacki tweeted a

series of photos showing Mr. Mulvaney “sitting in [the CFPB] director’s office. Already hard at work as acting director of cfpb,”¹ and of a “10 am meeting between Acting Director @mickmulvaneyOMB and cfpb senior staff.”² Mr. Czwartacki also provided a Twitter update on several boxes of donuts that Mr. Mulvaney brought to the agency, tweeting a picture of two nearly-empty boxes and noting at 11:03 AM that the “Donuts were a big hit at cfpb. Like they always are. @MickmulvaneyOMB”³

In addition to Mr. Czwartacki, my staff has also been informed that other senior OMB staff have accompanied Mr. Mulvaney at the CFPB.

I ask that you answer the following questions about Mr. Mulvaney, Mr. Czwartacki, and other staff that have accompanied Mr. Mulvaney to OMB.

1. What staff from OMB or elsewhere in the Executive Office of the President (EOP) have accompanied Mr. Mulvaney to the CFPB? Please provide a complete list of all such staff, their title at OMB or in the EOP, and their title at the CFPB.
2. Under what authority are these individuals working at CFPB? Have these individuals been appointed to CFPB, or detailed to CFPB, or are they at CFPB under different authority? Please provide answers to these questions for all individuals listed in response to question 1.
3. Are any members of Director Mulvaney’s staff political appointees? Please provide answers to these questions for all individuals listed in response to question 1.
 - a. If so, are these appointees working at the CFPB without undergoing the formal hiring process necessary for all CFPB employees except the Director and Deputy Director?
 - b. Has Director Mulvaney received a waiver from the Office of Personnel Management to hire any staff members who were political appointees at OMB?
4. What agency is paying the salary of these individuals? Is Mr. Mulvaney being paid by OMB or by the CFPB? Are other individuals being paid by OMB or elsewhere in the EOP, or are they being paid by the CFPB? Are any of these individuals working as unpaid volunteers at the CFPB while being paid by OMB? Please provide answers to these questions for all individuals listed in response to question 1.
5. Salary structures are different for the CFPB and OMB. How much are individuals who accompanied Mr. Mulvaney to OMB being paid? Please provide answers to these questions for all individuals listed in response to question 1.

Ethics Rules for Mr. Mulvaney and Other OMB Staff at the CFPB

I also have questions about the ethics standards that apply to Mr. Mulvaney and his staff’s move in their role at the CFPB. CFPB employees are subject to different ethics requirements than

¹ <https://twitter.com/CZ/status/935130269857779712>

² <https://twitter.com/CZ/status/935174409421230081>

³ <https://twitter.com/CZ/status/935177171697586181>

OMB employees – in fact, the White House has made claims that many ethics requirements that would apply to CFPB officials “do not apply to employees of the Executive Office of the President,” including those at OMB.⁴ For example, the CFPB prohibits ownership of a security in any “entity supervised by the Bureau,” and requires employees to confirm divestiture in writing within 30 days of the start of employment.⁵

In light of Mr. Mulvaney’s dual role, I ask that you answer the following questions:

1. What ethics requirements will apply to Mr. Mulvaney in his role at the CFPB? Which of these are new requirements that did not apply to him in his role at OMB?
2. What ethics requirements will apply to any EOP staff that has accompanied Mr. Mulvaney to the CFPB? Which of these are new requirements that did not apply to them in their role at OMB?
3. As of today, what steps have Mr. Mulvaney and other staff taken to comply with these requirements? What additional steps do they have planned?
4. Has Mr. Mulvaney consulted with the Designated Agency Ethics Official at the Consumer Financial Protection Bureau to determine compliance with the CFPB’s ethics rules and regulations?
5. Have any OMB or EOP staff that accompanied Mr. Mulvaney to the CFPB consulted with the Designated Agency Ethics Official at the Consumer Financial Protection Bureau to determine compliance with the the CFPB’s ethics rules and regulations?
6. What ethics requirements does the White House believe do not apply to employees of the Executive Office of the President that now apply to Mr. Mulvaney at the CFPB?
7. Has Mr. Mulvaney or his staff consulted with the White House Counsel or other ethics officials to avoid conflicts of interest between their dual roles at the CFPB and OMB?

Record-Keeping and Communications Requirements

Given the dual roles for Mr. Mulvaney and his staff, I am also concerned about record-keeping and other procedures in place to ensure that their work remains separate and subject to appropriate Presidential Records Act, Freedom of Information Act, and other recordkeeping and transparency requirements, and is categorized correctly for these purposes. I ask that you answer the following questions about these issues:

1. Will Mr. Mulvaney maintain offices at both the CFPB and OMB?
 - a. Will limitations be placed on where Mr. Mulvaney conducts work-related activities for the CFPB and for OMB?
2. Will Mr. Mulvaney use different government-issued e-mail accounts for his work at OMB and his work at the CFPB?

⁴ Danielle Kurtzleben, “U.S. Ethics Official to White House: No, These Rules Definitely Apply to You,” *NPR* (Mar. 9, 2017) (online at <https://www.npr.org/sections/thetwo-way/2017/03/09/519554307/u-s-ethics-official-to-white-house-no-these-rules-definitely-apply-to-you>).

⁵ Supplemental Standards of Ethical Conduct for Employees of the Bureau of Consumer Financial Protection, § 9401.106(a); § 9401.106(c).

- a. Has Mr. Mulvaney been issued an e-mail account for his work at the CFPB?
 - b. How is Mr. Mulvaney currently communicating with CFPB officials and others for CFPB-related business?
 - c. How did Mr. Mulvaney communicate with CFPB officials and others for CFPB-related business between November 24 and today?
 - d. Does Mr. Mulvaney have separate mobile devices to handle phone calls, email, and other communications for his CFPB and OMB roles?
 - e. What controls are in place to monitor the communications of Mr. Mulvaney ensure a separation of CFPB- and OMB-related business, and to ensure that communications are properly categorized into CFPB- and OMB-related matters?
3. Will Mr. Mulvaney's staff use different government-issued e-mail accounts for their work at OMB and his work at the CFPB?
- a. Which members of Mr. Mulvaney's staff have been issued e-mail accounts for their work at the CFPB?
 - b. How are members of Mr. Mulvaney's staff currently communicating with CFPB officials and other for CFPB-related business?
 - c. Do these staff have separate mobile devices to handle phone calls, email, and other communications for his CFPB and OMB roles?
 - d. What controls are in place to monitor Mr. Mulvaney's staff to ensure a separation of communications for CFPB- and OMB-related business, and to ensure that communications are properly categorized into CFPB- and OMB-related matters?
 - e. The CFPB, on a monthly basis, releases the Director's calendar, providing transparency on who the Director meets with on important issues. Will Mr. Mulvaney continue to follow this practice? If so, how will he determine which matters appear on the CFPB calendar? Will he also include all calendar meetings that he takes as OMB Director where issues related to the CFPB are discussed?
4. What procedures are in place to ensure proper compliance with the Presidential Records Act, the Freedom of Information Act, and other relevant recordkeeping and transparency laws for all documents – including email and text communications, slides, memos, and letters – at both the CFPB and OMB?

Thank you for your prompt response to these questions.

Sincerely,



Elizabeth Warren
United States Senator

cc: OMB Office of General Counsel
CFPB Office of General Counsel
David Apol, Acting Director, Office of Government Ethics