

United States Senate

WASHINGTON, DC 20510

December 1, 2017

Leandra English
Acting Director
Consumer Financial Protection Bureau
1700 G St. NW
Washington, D.C. 20552

The Honorable Mick Mulvaney
Director
Office of Management and Budget
725 17th St. NW
Washington, D.C. 20503

Dear Acting Director English and Director Mulvaney:

We are writing to seek information about Office of Management and Budget Director Mick Mulvaney's claims that the Consumer Financial Protection Bureau (CFPB) will halt payments from the CFPB's civil penalties fund that would otherwise be used to compensate consumers who have been cheated by large financial institutions. It is inexplicable to us why the CFPB under Mr. Mulvaney's orders is punishing consumers who have been innocent victims of corporate fraud.

The CFPB's Civil Penalty Fund is not some idea thought up by someone at the agency. The fund was established by Congress through the Dodd-Frank Act in 2010, "to provide compensation to consumers who have been harmed by violations of federal consumer financial protection law."¹ When the CFPB collects a civil penalty, that penalty is placed in the Civil Penalty Fund. The money is pooled and can be used to make consumers whole "who haven't received full compensation for their harm" through other avenues.² To date, of the \$12 billion returned to consumers by the agency, \$4 billion has been returned through the Civil Penalty Fund.³

According to the Dodd-Frank law passed by Congress, the Deputy Director, Leandra English, is the Acting Director of the CFPB. Despite this fact, President Trump attempted to name OMB

¹ "Civil Penalty Fund," *CFPB* (online at <https://www.consumerfinance.gov/about-us/payments-harmed-consumers/civil-penalty-fund/>).

² *Id.*

³ "Consumer Financial Protection Bureau: By the numbers," *CFPB* (July 2017) (available at https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201707_cfpb_by-the-numbers.pdf).

Director Mulvaney as Acting Director of the CFPB.⁴ On November 27th, OMB Director Mulvaney, in his first press conference in his CFPB role, announced that he would halt all payments to fraud victims and other consumers from the Civil Penalty Fund, claiming that “there will be no payments out of the civil penalties fund for at least 30 days while I get a chance to see what’s happening.”⁵ Director Mulvaney claimed that he “wanted to get a handle on what that fund is all about” before he distributes money to consumers that have been harmed by financial institutions.⁶ Finally, OMB Director Mulvaney stated that there would be “exceptions” to this policy.⁷

The Civil Penalty Fund is a vital resource for millions of Americans to recoup their losses when financial institutions cheat them out of their hard-earned dollars. Halting payments – even for a month – may cause further damage to people who have already been cheated. Doing so in order to “get a handle on what that fund is all about” is especially inexcusable given the hundreds of employees at the CFPB – including Acting Director English – with knowledge of the Fund and years of experience in making certain that those funds go to fraud victims. And the vague “exceptions” promised by Mr. Mulvaney smack of capriciousness. Given these concerns, we urge both of you to continue administering the Fund. And we ask that you answer the following questions no later than December 5, 2017:

1. As of today, what is the current policy in place for Civil Penalty Fund payments?
 - a. Has Mr. Mulvaney in fact enacted a freeze?
 - b. If so, how, and under what authority did he do so? Please provide copies of all regulatory guidance or orders initiated by Mr. Mulvaney with regard to the freeze.
 - c. How long will the freeze last?
 - d. Who will make the decision to end the freeze, and what will the criteria be for doing so?
 - e. What, precisely, will Mr. Mulvaney be reviewing as he seeks to “see what’s happening”?
2. What is the impact of the freeze?
 - a. How many payments to consumers were scheduled to be made that will now be frozen?
 - b. What is the value of these frozen payments?
Please list all groups and victim classes whose payments are or will be frozen, and the value of the frozen payments.

⁴ Victoria Guida, “Trump taps Mulvaney to head CFPB, sparking confusion over agency’s leadership,” *Politico* (Nov. 24, 2017) (online at <https://www.politico.com/story/2017/11/24/richard-cordray-successor-cfpb-leandra-english-259612>).

⁵ “Acting CFPB Director Mulvaney News Conference,” *C-SPAN* (Nov. 27, 2017) (online at <https://www.c-span.org/video/?437841-1/acting-cfpb-director-mick-mulvaney-speaks-reporters>).

⁶ *Id.*

⁷ *Id.*

3. What is the nature of any “exceptions” to the freeze on Civil Penalty Fund payments discussed by Mr. Mulvaney?
- a. What are the criteria used to determine if an exception can be made?
 - b. Who will make this determination, and how will they do so?
 - c. Will CFPB provide transparency and clearly articulate the agency’s exception policy and make public all exception decisions?

Sincerely,



Elizabeth Warren
United States Senator



Sherrod Brown
United States Senator