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December 18, 2017

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

Dear Mr. Mulvaney:

I am writing to urge you to reconsider your decision to hire political appointees at the Consumer Financial Protection Bureau (CFPB). If you chose to move forward, I ask you to carefully review federal civil service laws before hiring any political appointees or making any decisions related to the work of civil service employees at the CFPB. Former CFPB Director Richard Cordray resigned on November 24, and federal law dictated that Leandra English, the agency's Deputy Director, immediately become Acting Director. Ignoring this law, President Trump appointed you as Acting Director of the CFPB. You now have control over day-to-day operations of the agency and in your first few weeks on the job, you appear to have taken steps to politicize the agency. You also appear to be disregarding the laws that assure that federal personnel decisions are merit-based, and protect civil service staff - including the staff at the CFPB - from unfair treatment based on their political views.

Career Federal employees serve during Republican and Democratic administrations. Civil service laws, which date from the 1800's and had their last major revision in the Civil Service Reform Act of 1978 in the wake of the Watergate scandal, are designed to protect these employees from undue political pressure and discrimination, allowing them to do their jobs as required by law. The law mandates "fair and equitable treatment in all aspects of personnel management without regard to political affiliation,"¹ specifically prohibiting a change in an employees' "duties, responsibilities, or working conditions...on the basis of...political affiliation."² It also states that "[e]mployees should be protected against arbitrary action [and] personal favoritism," and that "selection and advancement [of civil service personnel] should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity."³

¹ 5 USC § 2301

² 5 USC § 2302

³ 5 USC § 2301

With the exception of the Director, all CFPB employees are career, non-political staff, hired through an open and often competitive process. But on November 30, you announced that for “every major branch of CFPB – enforcement, rulemaking, education, legal,” the regional offices and maybe more, you would appoint a “political” staffer to “marry [the] senior staffer.”⁴ When questioned about why you are taking these actions, which are unprecedented, you replied that many of the existing civil service leadership that were hired through merit-based processes under Director Cordray “were political anyway.”⁵ You produced no evidence to back up that insulting claim.

CFPB is an independent agency, making your hiring plan – and your comments – inappropriate. Other independent financial regulators have very modest political staffs with limited roles. According to the 2016 Plum Book released in the weeks before Donald Trump took office, Schedule C employees at other financial regulators mostly serve on the personal staffs of the Senate-confirmed leaders as writers and assistants, or they handle relations with the press and Congress.⁶ Some regulators, such as the Office of the Comptroller of the Currency, have no Schedule C appointees of any kind.⁷ No other financial regulator has Schedule C appointees in charge of regional offices or regulatory functions, and only one -- the Commodity Futures Trading Commission – has a political head of enforcement.⁸ None has a political General Counsel.⁹

There’s a reason for this. Executive branch agencies like OMB often appropriately have dozens of political appointees who shape policy and carry out the President’s priorities. Financial regulators are different. Congress granted them independence “under an assumption that their work is more technical¹⁰” and that politicizing their work would be harmful and make it more difficult for these agencies to fulfill their regulatory obligations. Your naked effort to politicize the consumer agency runs counter to the agency’s mission to be an independent voice for consumers with the power to stand up to Wall Street banks.

In addition, your actions to “marry” these career staff with political appointees appears to be a clear effort to reduce the authority of the career civil-servants and reassign their duties because of their politics. This would represent a potential violation of federal civil service laws, which state that it is unlawful to “significant[ly] change [] duties, responsibilities, or working conditions” of any civil service employee “on the basis of . . . political affiliation,¹¹” that

⁴ The American Banker, *Mulvaney’s Plan to Embed Political Staffer in CFPB Sparks Backlash* (Dec. 5, 2017) (<https://www.americanbanker.com/news/mulvaneys-plan-to-embed-political-staffers-in-cfpb-sparks-backlash>).

⁵ *Id.*

⁶ The Government Printing Office, *Policy and Supporting Positions* (Dec. 1, 2016) (<https://www.gpo.gov/fdsys/pkg/GPO-PLUMBOOK-2016/pdf/GPO-PLUMBOOK-2016.pdf>).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ The American Banker, *Mulvaney’s Plan to Embed Political Staffer in CFPB Sparks Backlash* (Dec. 5, 2017) (<https://www.americanbanker.com/news/mulvaneys-plan-to-embed-political-staffers-in-cfpb-sparks-backlash>).

¹¹ 5 USC §2302

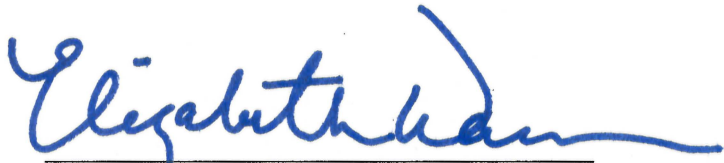
employees should be protected against arbitrary action [and] personal favoritism," and that "selection and advancement [of civil service personnel] should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity."¹²

Federal civil servants are the backbone of the American government. Recent attacks on this non-political group of employees that provide the government with technical expertise and unbiased service threaten to undermine the integrity of independent agencies.¹³ Your plans to undercut the authority of the CFPB's professional staff with political appointees challenges the agency's independence and the ability of these employees to carry out the CFPB's mission.

You have indicated that your actions to bring in political appointees are occurring "Now."¹⁴ In order to ensure that you maintain the independence of the agency, I ask that you reconsider your plans to politicize the CFPB. If you decide to move forward, I recommend that you carefully review federal civil service laws to ensure your compliance before hiring any political appointees or making any staffing decisions that might reduce the authority and responsibility of key CFPB professional staff. Furthermore, I ask that you comply with your statutory obligation to educate the CFPB's employees of the "rights and remedies available to them" under civil service and whistleblower protection laws.¹⁵ I also ask that you provide my staff with a briefing on this matter no later than December 22, 2017.

Thank you for your prompt attention to this matter.

Sincerely,



Elizabeth Warren
United States Senator

cc: Leandra English, Acting Director, Consumer Financial Protection Bureau
Henry Kerner, Director, Office of Special Counsel

¹² 5 USC § 2301

¹³ The New York Times, *Rumblings of a 'Deep State' Undermining Trump? It Was Once a Foreign Concept*, (March 6, 2017) (<https://www.nytimes.com/2017/03/06/us/politics/deep-state-trump.html>); Foreign Policy, *How the Trump Administration Broke the State Department*, (July 31, 2017) (<http://foreignpolicy.com/2017/07/31/how-the-trump-administration-broke-the-state-department/>).

¹⁴ The American Banker, *Mulvaney's Plan to Embed Political Staffer in CFPB Sparks Backlash* (Dec. 5, 2017) (<https://www.americanbanker.com/news/mulvaney-s-plan-to-embed-political-staffers-in-cfpb-sparks-backlash>).

¹⁵ 5 USC § 2302(c)