

December 17, 2018

Mr. Mark Bialek
Inspector General
Board of Governors of the Federal Reserve and the Consumer Financial Protection Bureau
20th Street and Constitution Avenue NW
Mail Stop K-300
Washington, DC 20551

Dear Mr. Bialek.

I write to request that you conduct an investigation into the decision by Interim Director Mick Mulvaney to attempt to change the name of the Consumer Financial Protection Bureau (CFPB). We are concerned that the name change effort imposes unnecessary and significant costs on taxpayers and the business community, deprives the CFPB of funds it can use to protect consumers, and violates legal requirements.

In March 2018, the CFPB announced that it would begin using a new seal that identified the agency as the Bureau of Consumer Financial Protection.¹ Soon after, Mr. Mulvaney told a gathering of the American Bankers Association that “[t]he CFPB doesn’t exist. The CFPB has never existed,”² and that he intended to formally change the agency’s name to the Bureau of Consumer Financial Protection (BCFP).

According to public reports, the CFPB’s own analysis indicates the name change would cost the agency itself between \$9 million and \$19 million and that “[b]anks, lenders and other financial services firms subject to CFPB supervision could be required to spend ... roughly \$300 million total to update internal databases, regulatory filings and disclosure forms with the new name.”³ Consumer advocates have also expressed concern that the name change will confuse consumers and prevent them from seeking help or filing complaints.

It appears that the CFPB did not take the appropriate procedural steps to change the agency’s name. To change its name, the agency would have to formally amend some of the rules it enforces, including the Fair Credit Reporting Act, the Electronic Fund Transfer Act, and certain mortgage regulations⁴ – which would impose costs on both the agency and regulated entities. For example, some of these rules include model forms that reference CFPB for entities to use to

¹ Consumer Financial Protection Bureau, “Introducing our new Bureau seal,” March 30, 2018, <https://www.consumerfinance.gov/about-us/blog/introducing-our-new-bureau-seal/>.

² American Banker, “Mulvaney to drop public complaints against firms, change CFPB name,” Rachel Witlowski, April 24, 2018, <https://www.americanbanker.com/news/mulvaney-to-drop-public-complaints-against-firms-change-cfpb-name>.

³ The Hill, “Exclusive: Consumer bureau name change could cost firms \$300 million,” Sylvan Lane, December 3, 2018, <https://thehill.com/policy/finance/419527-exclusive-consumer-bureau-analysis-says-name-change-could-cost-firms-300>.

⁴ *Ibid*

make disclosures. They would need to be amended through a formal rulemaking, as they were when the CFPB was founded.⁵ The agency's regulatory agenda reflects no plans to initiate those rulemakings.⁶

In addition, the Small Business Regulatory Enforcement Fairness Act (SBREFA) requires the CFPB to follow a detailed set of procedures to analyze the effects on small businesses of rules "which will have a significant economic impact on a substantial number of small entities."⁷ The CFPB's estimate that this rule would impose \$300 million meets this threshold.⁸ The agency did not follow the SBREFA procedures.⁹

In addition to the costs imposed on the banking industry, the name change would also put a serious dent in the agency's budget, taking funding away from efforts that would actually benefit consumers. The CFPB analysis suggests that changing the name would "cost the agency between \$9 million and \$19 million, by updating internal materials and its website."¹⁰ The CFPB leadership has requested a 17% cut in total funding for FY 2019¹¹ – and these new name change-related expenses would come out of the already limited funding request for the agency. The net result would be a 47% cut in the agency's non-personnel budget, meaning that the agency would only have half as much money to spend on priorities other than staff salary and benefits. These cuts would severely limit the number of investigations and examinations the CFPB can undertake, the number of complaints it can handle, and the number and scope of cases the CFPB can bring on behalf of consumers.

Finally, the name change would undermine the CFPB's past efforts to build public awareness of the agency in an effort to help as many consumers as possible. Over the last seven years, the CFPB has worked diligently to raise awareness about the agency so that consumers would know where to go for unbiased information or assistance if they were wronged by a financial institution. Changing the agency's name and acronym would make it harder for consumers to find the agency's website, file complaints, and seek help.

Even worse, due to a poorly-planned and incomplete transition, the agency currently appears to be using both names. While the CFPB's political appointees exclusively refer to the agency as the BCFP, the agency's website greets visitors with a banner that says "We're the CFPB."¹² In that environment, a consumer would be hard-pressed to know whether a remediation check they receive with the old CFPB seal is a scam or whether they have the right number if they call the complaint hotline and an operator from the BCFP answers the phone.

⁵ CFPB Fair Credit Reporting (Regulation V) Rule, 12 CFR § 1022 (2011)

⁶ Consumer Financial Protection Bureau, "Fall 2018 rulemaking agenda," Kelly Cochran, October 17, 2018, <https://www.consumerfinance.gov/about-us/blog/fall-2018-rulemaking-agenda/>.

⁷ Small Business Administration, "The Regulatory Flexibility Act," <https://www.sba.gov/advocacy/regulatory-flexibility-act>.

⁸ Compare the CFPB rule on arbitration agreements, where the CFPB followed the SBREFA procedures for a rule that had an estimated cost of \$8 million and \$76 million cost per year.

⁹ Small Business Administration, "CFPB SBREFA Panels," https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_financial-report_fy17.pdf.

¹⁰ The Hill, "Exclusive: Consumer bureau name change could cost firms \$300 million," Sylvan Lane, December 3, 2018, <https://thehill.com/policy/finance/419527-exclusive-consumer-bureau-analysis-says-name-change-could-cost-firms-300>.

¹¹ Response from Interim Director Mick Mulvaney to Senator Elizabeth Warren, November 28, 2018

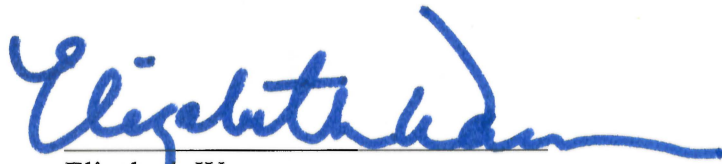
¹² ConsumerFinance.gov (last visited Dec. 5, 2018).

The costs of this proposal are straightforward and significant but the benefits are nonexistent. To justify the name change, Mulvaney said “[w]e changed the name because it’s the name in the statute.”¹³ Yet many agencies – including the Census Bureau, Fannie Mae, and Freddie Mac – use colloquial names that are different from their statutory references.¹⁴

The failure to justify the name change, combined with the failure to follow basic procedural rules, the wasteful expenditures, and the confusing implementation suggest a serious breakdown in the policy-making process at the CFPB. Therefore, we respectfully request that you initiate an investigation into the CFPB’s name change that answers the following questions:

1. Who decided to change the name of the Consumer Financial Protection Bureau, and how was this decision made?
2. What formal processes are required by the Administrative Procedures Act, the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, or any other law in order for the agency to change its name? Did the agency fulfill those requirements?
3. Was a full cost-benefit analysis undertaken before the name change was made?
4. What, if any, plans does the agency have to fully implement the name change?
5. What benefits are there to the name change?
6. What other activities will the agency need to cut back on in order to absorb the cost of the name change?
7. Did the agency’s general counsel advise Mr. Mulvaney or any other agency official that changing the agency’s name was legally required? Did Mr. Mulvaney or any other agency official ask the agency’s general counsel’s office to provide its analysis of the issue?

Sincerely,



Elizabeth Warren
United States Senator

¹³ Housing Wire, “CFPB-to-BCFP name change could cost companies \$300 million,” Jessica Guerin, December 5, 2018, <https://www.housingwire.com/articles/47628-cfpb-to-bcfp-name-change-could-cost-companies-300-million>.

¹⁴ In statute, the Census Bureau is referred to as the Bureau of the Census, *See* 13 U.S.C. § 2, Fannie Mae is referred to as the Federal National Mortgage Association and Freddie Mac is the Federal Home Loan Mortgage Corporation, *See* 12 U.S.C § 4501. In addition, Dodd-Frank makes references to both the Bureau of Consumer Financial Protection and the Consumer Financial Protection Bureau. *See* Sec. 1001 (“Bureau of Consumer Financial Protection”), Sec. 1100G (“Consumer Financial Protection Bureau”).