Congress of the United States
Washington, DC 20510

December 19, 2018

Kathleen Kraninger
Director
Consumer Financial Protection Bureau
1700 G St. NW
Washington, D.C. 20552

Dear Director Kraninger,

As the newly confirmed Director of the Consumer Financial Protection Bureau (CFPB), you have a critical and urgent task ahead of you: reorienting the CFPB so that it once again fulfills its statutory mission of protecting consumers. For the first six years of its existence, the CFPB pursued this mission, leveling the playing field for consumers and returning nearly $12 billion to people who had been cheated.[1] But in his one-year tenure as Interim Director of the CFPB, Mick Mulvaney repeatedly attempted to undermine the agency's mission. I am writing today to outline the steps that you can take promptly to reverse the anti-consumer initiatives undertaken by Interim Director Mulvaney and to ensure that the CFPB adequately protects consumers.

Congress created the CFPB after the 2008 financial crisis and tasked the new executive agency with enforcing consumer protection laws. In the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), Congress designed the CFPB to be independent and insulated from political influence. For that reason, the CFPB is funded outside the appropriations process like all other banking regulators, the Senate-confirmed CFPB Director is removable only for cause, and the law specifies no other political appointees at the agency.

For its first six years, the CFPB operated as Congress intended—as a robust, nonpartisan regulator, taking advantage of all available authorities to protect consumers from fraud and abuse. The Bureau prioritized apolitical enforcement actions promoting the wellbeing and financial stability of hardworking Americans. It wrote rules to prevent the abuses that caused the 2008 financial crisis and to protect consumers from new threats to their privacy and their economic security. 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."[2] This independent, mission-driven approach got results: the Bureau has returned $12.4 billion to more than 31 million consumers as a result of its enforcement actions.[3]

[1] Consumer Financial Protection Bureau, "Consumer Financial Protection Bureau: by the numbers," December 2016, https://files.consumerfinance.gov/f/documents/201701_cfpb_CFPB-By-the-Numbers-Factsheet.pdf.
[2] Letter from Seth Frotman to Acting CFPB Director Mick Mulvaney, August 27. 2018, https://www.npr.org/2018/08/27/642199524/student-loan-watchdog-quits-blames-trump-administration.
[3] Consumer Financial Protection Bureau, "Consumer Financial Protection Bureau," last accessed Nov. 19, 2018, https://www.consumerfinance.gov/.

Unfortunately, after his appointment to the office by President Trump in November 2017, Mr. Mulvaney did everything in his power to weaken and politicize the agency. He filled the agency with political appointees, halted enforcement activity, decimated the agency's access to resources and data, and dismantled critical protections for students, servicemembers, and communities of color. Ultimately, his actions placed the interests of financial firms and his political cronies ahead of those of America's families.[4]

As the new Director of the CFPB, you have the opportunity to reverse the damage done by Interim Director Mulvaney. To do so, I ask that you take the following five actions by January 6, 2019—the one-month anniversary of your confirmation as Director.

- End the politicization of the CFPB by eliminating the dozen-plus political positions Mr. Mulvaney created at the agency.
- Recommit the agency to pursuing aggressive investigations of wrongdoing and enforcement actions against corporations that violate the law.
- Preserve the Bureau's ability to collect and use data to stop consumer ripoffs.
- Restore the full authority of the CFPB's Office of Fair Lending and Equal Opportunity.
- Take quick action to reinstate protections for students, young consumers, and servicemembers.

The remainder of this letter provides additional details on my requests.

<u>Remove the political appointees at the CFPB.</u>

Congress established the CFPB as a nonpartisan regulator with no political appointees other than the Director. Yet, almost immediately after his appointment, Interim Director Mulvaney outlined his vision of a politicized 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,"[5] to second guess the decision-making of senior career civil servants. In his year serving as the Bureau's Interim Director, Mr. Mulvaney hired more than a dozen political appointees, including a number of former Republican operatives who received significant pay raises after joining the Bureau.[6]

These political appointees reflect a departure from Congressional intent, the last six years of CFPB's apolitical culture, and the practices of other independent financial regulators. To demonstrate to the American people that the CFPB, under your watch, will serve as an unbiased agency operating independently of the whims of political partisanship, I ask that you **immediately remove the political appointees hired at the CFPB.**

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[4] Letter from Senator Elizabeth Warren to Members of the U.S. Senate, November 27, 2018, https://www.warren.senate.gov/imo/media/doc/2018-11-27%20Dear%20colleague%20letter%20re%20Kathy%20Kraninger.pdf.

[5] American Banker, "Mulvaney's plan to embed political staffers in CFPB sparks backlash," Kevin Wack, December 5, 2017, https://www.americanbanker.com/news/mulvaneys-plan-to-embed-political-staffers-in-cfpb-sparks-backlash.

[6] Response to Questions for the Record received 11/28/18, pg. 30; New York Times, "Consumer Bureau's Chief Gives Big Raises, Even as He Criticizes Spending," Stacy Cowley, April 5, 2018, https://www.nytimes.com/2018/04/05/business/cfpb-mick-mulvaney-pay-raises.html.

Pursue aggressive enforcement to protect consumers.

As the Senate considered your nomination, you informed lawmakers that, "under [your] stewardship, the Bureau will take aggressive action against bad actors who break the rules by engaging in fraud and other illegal activity."[7] I appreciated these comments: the CFPB should act as an aggressive enforcer of the laws that protect America's consumers. Yet under the leadership of Interim Director Mulvaney, the CFPB drastically reduced its enforcement activity.

One of Mr. Mulvaney's first acts as Interim CFPB Director was to halt the agency's enforcement activities. 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."[8] Under his leadership, the CFPB also failed to file an enforcement action against Equifax, though it has been over a year since the corporation placed the personal information of over 140 million Americans at risk,[9] or a single action on behalf of student borrowers.[10] Overall, enforcement activity in 2018 has been 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.[11] And when Mr. Mulvaney did choose to penalize bad actors, he sought much weaker settlements than those pursued by his predecessor.[12]

These failures by Mr. Mulvaney gave a green light to companies—big and small—to rip off American consumers. But you can easily reverse these actions. To show your commitment to taking "aggressive action against bad actors who break the rules," I ask that you **immediately reinvigorate the Bureau's enforcement activities, reversing the decline in the number of enforcement actions that occurred under Mr. Mulvaney's watch. This effort should include a commitment to taking strong actions to punish companies that harm American servicemembers and families, ensuring that victims of corporate scams are fairly compensated, and that future illegal behavior is deterred.**

Restore and protect the Bureau's ability to collect and use data.

The collection of data on financial institutions is critical to the CFPB's ability to both identify systemic problems in financial services markets and help address individual consumers'

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[7] Written Testimony of Kathleen Kraninger to the U.S. Senate Committee on Banking, Housing, and Urban Affairs, July 19, 2018, https://www.banking.senate.gov/imo/media/doc/Kraninger%20Testimony%207-19-183.pdf.
[8] Associated Press, "Under Trump and Mulvaney, CFPB has filed no enforcement actions since November," Ken Sweet, April 10, 2018, https://www.usatoday.com/story/money/economy/2018/04/10/under-trump-mulvaney-cfpb-has-filed-no-enforcement-actions/502451002/.
[9] Reuters, "Exclusive: U.S. consumer protection official puts Equifax probe on ice—sources," Patrick Rucker, February 5, 2018, https://www.reuters.com/article/us-usa-equifax-cfpb/exclusive-u-s-consumer-protection-official-puts-equifax-probe-on-ice-sources-idUSKBN1FP0IZ.
[10] Student Borrower Protection Center, "A Year Without Action: An Analysis of Borrower Complaints." December 11, 2018, https://protectborrowers.org/wp-content/uploads/2018/12/SBPC-A-Year-Without-Action_2018.pdf.
[11] Bloomberg News, "Enforcement Actions Drop Sharply at Trump-Led CFPB," Jeff Bater, October 11, 2018, https://www.bna.com/enforcement-actions-drop-n73014483278/.
[12] The Intercept, "The 'Mulvaney Discount': Trump's Consumer Protection Czar is Shrinking Fines for Law-Breaking Companies," David Dayen, July 27, 2018, https://theintercept.com/2018/07/27/mick-mulvaney-consumer-protection-corporate-fines/.

complaints. But Interim Director Mulvaney undermined the agency's ability to collect and use this data. Within days of taking office, he instituted an unnecessary and chaotic data freeze, effectively halting investigative activity at the Bureau for weeks.[13] Mr. Mulvaney justified this freeze by mischaracterizing results of reports on the CFPB's cyber-security capabilities,[14] and ultimately lifted it after it became clear he could no longer justify his claims.[15] Mr. Mulvaney also threatened to make information in the CFPB's consumer complaint database—a public resource that has processed 1.5 million complaints since its launch[16]—private. The consumer complaint database is used by consumers to make informed financial choices, by businesses to do due diligence about potential partners, and by governments and scholars to track trends in the consumer marketplace in real time.

The American people deserve a watchdog that robustly pursues the information it needs to conduct its statutory supervisory and enforcement responsibilities. I urge you to **commit to continuing to collect the high-quality data that CFPB needs to inform its work and promise to keep public all information currently publicly available in the CFPB's consumer complaint database.**

Restore the enforcement powers of the CFPB's Office of Fair Lending.

The CFPB is statutorily obligated to ensure that "consumers are protected…from discrimination,"[17] and Dodd-Frank explicitly requires that CFPB establish an Office of Fair Lending and Equal Opportunity (the Office of Fair Lending) in support of this goal.[18] The law states that "[t]he Office of Fair Lending and Equal Opportunity shall ... provid[e] oversight and enforcement of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities."[19]

Since its establishment, the Office of Fair Lending has won multi-million-dollar penalties against discriminatory lenders. In 2013, the Office forced auto-lending giant Ally Financial to pay a $98 million settlement after finding that it systemically charged minority borrowers higher rates for car loans than white borrowers.[20] And in 2015, the Office—in conjunction with the

[13] Letter from Senator Elizabeth Warren to Acting CFPB Director Leandra English and Acting CFPB Director Mick Mulvaney, January 4, 2018, https://www.warren.senate.gov/files/documents/2018_01_04_Letter_to_English_and_Mulvaney_on_CFPB_Data_Collection.pdf.
[14] Wall Street Journal, "New CFPB Chief Curbs Data Collection, Citing Cybersecurity Worries," Yuka Hayashi, December 4, 2017, https://www.wsj.com/articles/new-cfpb-chief-curbs-data-collection-citing-cybersecurity-worries-1512429736.
[15] Wall Street Journal, "CFPB to Resume Private Consumer Data Collection," Lalita Clozel, May 31, 2018, https://www.wsj.com/articles/cfpb-to-resume-private-consumer-data-collection-1527796179.
[16] Consumer Financial Protection Bureau, "Consumer Complaint Database," https://www.consumerfinance.gov/data-research/consumer-complaints/.
[17] 12 U.S.C. § 5511(b)(2)
[18] 12 U.S.C. § 5493(c).
[19] 12 U.S.C. § 5493(c)(2)(A).
[20] Washington Post, "Trump administration strips consumer watchdog office of enforcement powers in lending discrimination cases," Renae Merle, February 1, 2018, https://www.washingtonpost.com/news/business/wp/2018/02/01/trump-administration-strips-consumer-watchdog-office-of-enforcement-powers-against-financial-firms-in-lending-discrimination-cases/?utm_term=.46b917491530.

Department of Justice—won the nation's largest-ever redlining settlement, charging Hudson City Savings Bank $27 million after investigating complaints that the bank did not provide minority borrowers in New York, New Jersey, Connecticut, and Pennsylvania with equal access to credit.[21] In total, the CFPB has obtained over $400 million for consumers in fair lending supervisory and enforcement actions.[22]

Mr. Mulvaney crippled the Office of Fair Lending during his tenure at the CFPB. He stripped the office 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.[23] 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, seemingly in violation of the text of Dodd-Frank.[24] And under Mr. Mulvaney's leadership, the CFPB does not appear to have filed a single fair-lending enforcement action.[25]

Meanwhile, Mr. Mulvaney worked to limit the CFPB's data collection under the Home Mortgage Disclosure Act (HMDA)[26] and signaled that the agency would reconsider its approach towards enforcing the Equal Credit Opportunity Act (ECOA) [27]—two pieces of legislation that help protect borrowers from discrimination. He also refused to fire Eric Blankenstein as a CFPB senior political appointee tasked with enforcing antidiscrimination laws at the agency even after reports surfaced that the appointee made "a series of racially provocative comments spanning the last 14 years."[28] Mr. Blankenstein's comments have lost him the confidence of his staff and cast

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[21] Housing Wire, "CFPB, DOJ fine Hudson City $27M for mortgage discrimination violations," Brena Swanson, September 24, 2015, https://www.housingwire.com/articles/35146-cfpb-doj-fine-hudson-city-27m-for-mortgage-discrimination-violations.

[22] Consumer Financial Protection Bureau, "Fair Lending Report of the Consumer Financial Protection Bureau," April 2017, https://files.consumerfinance.gov/f/documents/201704_cfpb_Fair_Lending_Report.pdf.

[23] Consumer Finance Monitor, "Mulvaney reorganizes CFPB Office of Fair Lending," Christopher J. Willis, February 1, 2018, https://www.consumerfinancemonitor.com/2018/02/01/mulvaney-reorganizes-cfpb-office-of-fair-lending/.

[24] Washington Post, "Trump administration strips consumer watchdog office of enforcement powers in lending discrimination cases," Renae Merle, February 1, 2018, https://www.washingtonpost.com/news/business/wp/2018/02/01/trump-administration-strips-consumer-watchdog-office-of-enforcement-powers-against-financial-firms-in-lending-discrimination-cases/.

[25] American Banker, "Senate Dems to Mulvaney: How did embattled aide get CFPB job?," Kate Berry and Rachel Witkowski, October 3, 2018, https://www.americanbanker.com/news/senate-dems-to-mulvaney-how-did-embattled-aide-get-cfpb-job; Consumer Financial Protection Bureau, "Enforcement actions," last reviewed November 26, 2018, https://www.consumerfinance.gov/policy-compliance/enforcement/actions/.

[26] American Banker, "CFPB to reopen mortgage disclosure rule, will not penalize data errors," Kate Berry, December 21, 2017, https://www.americanbanker.com/news/cfpb-to-reopen-hmda-rule-will-not-penalize-data-errors.

[27] American Banker, "Trump makes repeal of CFPB auto lending rule official," Neil Haggerty, May 21, 2018, https://www.americanbanker.com/news/trump-makes-repeal-of-cfpb-auto-lending-rule-official; Consumer Financial Protection Bureau, "Statement of the Bureau of Consumer Financial Protection on enactment of S.J. Res. 57," May 21, 2018, https://www.consumerfinance.gov/about-us/newsroom/statement-bureau-consumer-financial-protection-enactment-sj-res-57/; Consumer Finance Monitor, "CFPB hints at possible disparate impact rulemaking," Christopher J. Willis, October 18, 2018, https://www.consumerfinancemonitor.com/2018/10/18/cfpb-hints-at-possible-disparate-impact-rulemaking/.

[28] New York Times, "Federal Anti-Discrimination Official Under Fire for Racial Comments," Glenn Thrush, October 3, 2018, https://www.nytimes.com/2018/10/03/us/politics/consumer-bureau-blankenstein-racial-comments.html.

a shadow over his efforts at the agency. Mr. Blankenstein is still among your staff at CFPB as a high-level political appointee.

As CFPB Director, you should **restore the Office of Fair Lending to its original placement within the CFPB's Supervision, Enforcement, and Fair Lending Division and reengage in supervision and enforcement efforts**. I also ask that you **remove Mr. Blankenstein from his post and halt any efforts underway at the Bureau to roll back HMDA and ECOA antidiscrimination protections.**

<u>Reinvigorate the Office for Students and Young Consumers and Protect Servicemembers and their Families from Harm.</u>

The CFPB is required by law to protect student borrowers from predatory lenders. Dodd-Frank required the CFPB to hire "a Private Education Loan Ombudsman" to "receive, review, and attempt to resolve…complaints from [student] borrowers"; "compile and analyze data on borrower complaints regarding private education loans"; and "make appropriate recommendations" and reports to Congress and the Department of Education" on policies to improve outcomes for student lenders.[29]

Prior to Mr. Mulvaney's appointment, the CFPB took numerous actions to protect students. The agency took aggressive enforcement actions against student loan servicers, resulting in the discharge of multiple million dollars-worth of student loan debt.[30] It also worked with the Department of Education and other regulators to issue guidance and resources for college students and other student borrowers.[31]

But in the past year, the CFPB has reneged on its responsibilities to student borrowers. Interim Director Mulvaney moved the Office of Students and Young Consumers—once an aggressive enforcer of laws protecting student borrowers—under the wing of the Office of Financial Education, a move that "signal[ed] a symbolic shift in mission from investigation to basic information-sharing."[32] In August 2018, the CFPB's Student Loan Ombudsman resigned, citing efforts by "the Bureau's new political leadership" to "undercut and undermine[]" the agency's "authority to oversee the student loan market" and to "shield[] bad actors from scrutiny."[33] The CFPB has yet to fill this position. Meanwhile, the agency hid reports critical of

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[29] 12 U.S.C. § 5535.

[30] Consumer Financial Protection Bureau, "Consumer Financial Protection Bureau Takes Action Against Bridgepoint Education, Inc. for Illegal Student Lending Practices," September 12, 2016, https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-takes-action-against-bridgepoint-education-inc-illegal-student-lending-practices/.

[31] Consumer Financial Protection Bureau, "Consumer Financial Protection Bureau: by the numbers," December 2016, https://files.consumerfinance.gov/f/documents/201701_cfpb_CFPB-By-the-Numbers-Factsheet.pdf.

[32] National Public Radio, "Senators Demand Answers from CFPB Head After Student Loan Watchdog's Resignation," Cory Turner, September 14, 2018, https://www.npr.org/2018/09/14/647467582/senators-demand-answers-from-cfpb-head-after-student-loan-watchdogs-resignation.

[33] Letter from Seth Grossman to Acting CFPB Director Mick Mulvaney, August 27, 2018, https://apps.npr.org/documents/document.html?id=4784891-Frotman-Letter.

efforts to swindle college students,[34] and failed to report information on student borrowers to Congress by statutorily-mandated deadlines.[35]

Meanwhile, Mr. Mulvaney took specific, arbitrary steps to weaken the CFPB's enforcement of the bipartisan Military Lending Act (MLA), to the surprise of servicemembers, the Department of Defense, and other consumer advocates.[36] The MLA caps the interest rates companies can charge active-duty servicemembers and their dependents at 36%, preventing the extortion of military families. [37] Since its inception, the CFPB has conducted 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.[38] This legal interpretation reflects a willful misreading of the MLA and Dodd-Frank[39] that could severely harm servicemembers and their families.

To ensure that students are adequately protected, **your first actions as CFPB Director should include reinstating the enforcement authority of the Office of Students and Young Consumers, filling the position of Student Loan Ombudsman, and rapidly providing Congress with information on student borrowers as required by statute.** You should also **restart supervisory examinations under the MLA to ensure that servicemembers and their families are protected from predatory lenders.**

During your Senate confirmation hearing, you stated that, if confirmed as the CFPB Director, you would "focus solely on serving the American people."[40] The steps identified in this letter would represent a strong step towards keeping that promise. They can easily be in place or in progress by January 6, 2019, the one-month anniversary of your confirmation as CFPB Director.

I look forward to working with you on efforts to stand up for American consumers by making sure that consumer financial products are safe and aggressively pursuing bad actors.

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[34] MarketWatch, "Wells Fargo and other banks charged college students $27 million in fees, buried CFPB report reveals," Jillian Berman, December 12, 2018, https://www.marketwatch.com/story/after-controversy-trump-administration-releases-report-showing-deals-between-bankscolleges-cost-students-27-million-2018-12-10.

[35] MarketWatch, "Trump administration skips annual report on student-loan borrower complaints," Jillian Berman, December 12, 2018, https://www.marketwatch.com/story/trump-administration-skips-annual-report-on-student-loan-borrower-complaints-2018-12-12.

[36] New York Times, "Mulvaney Looks to Weaken Oversight of Military Lending," Glenn Thrush, August 10, 2018, https://www.nytimes.com/2018/08/10/us/politics/mulvaney-military-lending.html; American Banker, "Pentagon, others baffled by CFPB plan to cease military lending exams," Kate Berry, October 11, 2018, https://www.americanbanker.com/news/pentagon-others-baffled-by-cfpb-plan-to-cease-military-lending-exams.

[37] Consumer Financial Protection Bureau, "What are my rights under the Military Lending Act?" October 7, 2016, https://www.consumerfinance.gov/ask-cfpb/what-are-my-rights-under-the-military-lending-act-en-1783/.

[38] New York Times, "Mulvaney Looks to Weaken Oversight of Military Lending," Glenn Thrush, August 10, 2018, https://www.nytimes.com/2018/08/10/us/politics/mulvaney-military-lending.html.

[39] Letter from Attorney General Douglas Peterson et al. to Acting Director Mick Mulvaney, October 23, 2018, http://ago.vermont.gov/blog/2018/10/23/attorney-general-donovan-urges-cfpb-to-protect-military-servicemembers-from-financial-exploitation/.

[40] Written Testimony of Kathleen Kraninger to the U.S. Senate Committee on Banking, Housing, and Urban Affairs, July 19, 2018, https://www.banking.senate.gov/imo/media/doc/Kraninger%20Testimony%207-19-183.pdf.

Please do not hesitate to reach out to Julie Siegel of my staff at 202-224-4543 with any questions or concerns.

Sincerely,

Elizabeth Warren

Elizabeth Warren
United States Senator