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March 16, 2018

Mick Mulvaney
Director
Office of Management and Budget
725 17th St. NW
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Dear Mr. Mulvaney:

I am writing to follow-up on your responses to nine of my letters that requested information and explanations for your questionable actions while running the Consumer Financial Protection Bureau (CFPB). Along with dozens of colleagues in the U.S. Senate and House of Representatives, I have sent you a series of substantive and detailed questions, and you have responded with answers that are almost entirely inadequate.

Since November 2017, my colleagues and I have sent you nine letters that included 125 questions and requests. You have ignored or provided evasive, misleading, or incomplete answers to 105 of these questions. That is an unacceptable track record for a public official. I ask that you answer these questions and provide the transparency needed for Congress and the American public to assess whether you are following the law and managing the CFPB effectively.

The remainder of this letter provides additional details about my concerns with your responses and includes all of the questions that you have not yet answered. I ask that you provide answers to these questions no later March 31, 2018.

Your Dual Roles at CFPB and OMB

After former Director Cordray resigned as head of the CFPB, you took over operational control of the agency. During the last three months, you have continued in your role as Director of the Office of Management and Budget (OMB) while simultaneously running the CFPB, which is an independent agency. Continuing in your role within the Executive Office of the President while leading an independent regulator undermines the arrangement that Congress sought to create when setting up the CFPB as an independent agency.

As the Ranking Member of a subcommittee with jurisdiction over CFPB, I have an obligation to conduct oversight of your actions at the agency. As your former colleague in the House of Representative Congressman Jeb Hensarling recently said, "Congress has the

constitutional responsibility to conduct oversight over the Executive Branch, and our citizens have the right to be informed on these matters....”¹ It is your job while running an executive agency to be responsive to Congress and to the American public.

Over the last three months, I have sent, alone or with other members of the House or Senate, nine letters about your actions that roll back consumer protections, undermine non-political civil servants, and undermine the Bureau’s authority and independence:

- On November 27, 2017, I sent you a letter with questions and concerns regarding the conflicts of interest arising from your dual roles at the CFPB and OMB;
- On December 1, Senator Brown and I wrote to you regarding your statements indicating you would stop payments from the Civil Penalty Fund designed to assist consumers;
- On December 18, I wrote to you about reports indicating you had initiated a review of more than 100 enforcement matters in litigation, completed investigations, and ongoing investigations;
- On December 18, I also sent you a letter with my concerns that your unprecedented and unusual efforts to bring political appointees to the CFPB was an impermissible effort to politicize the agency;
- On January 4, 2018, I sent you a letter regarding the harmful impacts of your decision to halt the collection of all data containing personally identifiable information (PII), which stopped all bank examinations for a time and precluded the enforcement team from reviewing evidence in their investigations;
- On January 19, I wrote to you with several other Senators regarding the CFPB’s incomplete Annual Report to Congress on College Credit Card Agreements and the failure to include pertinent information;
- On January 31, along with dozens of my colleagues from the House and Senate, I sent you a letter with concerns and questions relating to a series of actions the CFPB took under your leadership to benefit payday lenders at the expense of consumers;
- On February 7, I wrote to you with a group of Senators regarding reports that you had either slowed or stopped the CFPB’s investigation into the Equifax breach and the company’s response; and
- On February 16, along with my colleagues in both the House and Senate, I sent you a letter about your decision to relocate the Office of Fair Lending and Equal Opportunity and to strip it of its statutorily mandated supervisory and enforcement powers.

Each time, I have written to you seeking information about actions that appear to undercut the CFPB’s mission and defy the intent of Congress about the role of the agency.

¹ Rep. Jeb Hensarling, Hensarling Statement on Importance of Releasing the Memo (Feb. 2, 2018) (<https://hensarling.house.gov/media-center/press-releases/hensarling-statement-on-importance-of-releasing-the-memo>).

In response to one of my letters, you reversed your public comments, assuring me that you would continue the important work of the Bureau. Along with Senator Brown, I wrote to you in December regarding your public statements that all payments from the Civil Penalty Fund – a statutorily mandated program that has returned hundreds of millions of dollars to consumers from the financial institutions that cheated them – would be frozen.² You had stated unambiguously that you would be freezing these payments for at least “30 days,” but in your response, you clarified that the Bureau “is maintaining operation of the Civil Penalty Fund.”³

Unfortunately, this accurate and complete response has been the exception.

You have failed to respond to at least one of my letters: my November 27, 2017, letter on the ethics concerns surrounding your dual roles at the CFPB and OMB. And even when you have responded to my letters, you have not answered my questions or addressed my concerns, omitting information to justify your actions or statements. In other cases, you have offered misleading or evasive answers. And in a number of instances, you have provided responses that are unsatisfactory and make no sense within the context of the CFPB’s mission.

Your responses also demonstrate a misunderstanding of the structure and legal status of the CFPB. In one response, you wrote that federal law “provides the Director or Acting Director near complete discretion and autonomy.” That is simply false. While the CFPB is an independent agency – like other financial regulators – its Director is subject to a number of clear legal requirements, on everything from ethics to enforcement to supervision. My concern is that you have repeatedly violated those requirements since assuming control of the agency. Your refusal to answer basic questions about the legal basis for your actions only heightens that concern.

Your Actions at the CFPB and My Inquiries

In the past three months, you have made a series of statements and taken numerous actions that undermine the CFPB’s ability to accomplish its statutorily mandated mission of protecting consumers. In response to these statements and actions, I have sent you nine letters asking for information about and justification for these actions.

On November 24, 2017, President Trump named you as Acting Director of the Consumer Financial Protection Bureau.⁴ This announcement came despite the language of Dodd-Frank

² Letter from Sen. Elizabeth Warren to Acting CFPB Director Leandra English and OMB Director Mick Mulvaney (Dec. 1, 2017) (https://www.warren.senate.gov/files/documents/2017_12_1_Civil_Penalty_Fund_Letter.pdf)

³ Letter from OMB Director Mulvaney to Senators Elizabeth Warren and Sherrod Brown (Dec. 7, 2017).

⁴ Washington Post, The CFPB Now Has Two Acting Directors and Nobody Knows Which One Should Lead the Federal Agency (Nov. 24, 2017) (https://www.washingtonpost.com/news/business/wp/2017/11/24/the-cfpb-now-has-two-acting-directors-and-nobody-knows-which-one-should-lead-the-federal-agency/?utm_term=.b57502881ddb)

clearly providing for then-Deputy Director Leandra English to become Acting Director.⁵ Despite the conflict between the independent CFPB and your position within the White House as OMB Director, you continued to serve in both roles. To address concerns about the conflicts of interest and other concerns regarding OMB staff serving at the CFPB, I sent you a letter asking about ethics rules applicable to you and other OMB staff spending time at the CFPB, and various transparency and record-keeping requirements.⁶

On November 27, 2017, just three days after President Trump directed you to assume control of the agency, you claimed that “there will be no payments out of the civil penalties fund for at least 30 days.”⁷ The Civil Penalty Fund has returned hundreds of millions of dollars to consumers from the financial institutions that cheated them. In announcing your decision, you failed to justify the freeze, in spite of the clear harm that it would inevitably bring to working Americans. On December 1, along with Senator Brown, I wrote to you about these concerns, asking a series of questions regarding the freeze, including how long it would last, the nature of any exceptions, and what the impact would be on planned future payments from the Civil Penalty Fund.⁸

On November 30, 2017, public reports indicated that you were reviewing 28 enforcement matters in litigation, 14 completed investigations, and 90 ongoing investigations.⁹ In several cases, it appeared that the CFPB had let companies off the hook as a result, such as when the Bureau allowed Nationwide Biweekly Administration, Inc. to postpone paying millions of dollars in penalties for deceptive mortgage practices.¹⁰ Neither Congress nor the American people knew who at CFPB was making these enforcement decisions, what criteria they were using, or what conflicts of interest they had. On December 18, I wrote to you with these concerns, asking a series of questions regarding your reviews, and any potential conflicts facing the staff assisting you in these reviews.¹¹

⁵ 12 U.S.C. 5491(a)(5).

⁶ Letter from Sen. Elizabeth Warren to White House Counsel Don McGahn and OMB Director Mick Mulvaney (Nov. 27, 2017)

(https://www.warren.senate.gov/files/documents/2017_11_27_Mulvaney_CFPB_OMB_Guidelines.pdf)

⁷ New York Post, Mulvaney Begins at CFPB with Immediate Freeze on Regulations (Nov. 27, 2017)

(<https://nypost.com/2017/11/27/mulvaney-begins-at-cfpb-with-immediate-freeze-on-regulations/>); C-SPAN, Acting CFPB Director Mulvaney News Conference, (Nov. 27, 2017) (on line at <https://www.cspan.org/video/?437841-1/acting-cfpb-director-mick-mulvaney-speaks-reporters>).

⁸ Letter from Sen. Elizabeth Warren to Acting CFPB Director Leandra English and OMB Director Mick Mulvaney (Dec. 1, 2017) (https://www.warren.senate.gov/files/documents/2017_12_1_Civil_Penalty_Fund_Letter.pdf)

⁹ Washington Times, Mulvaney Scrutinizing 125 CFPB Cases Opened by Liberal Predecessor (Nov. 30, 2017) (<https://www.washingtontimes.com/news/2017/nov/30/mick-mulvaney-seeks-more-trump-appointees-help-him/>); See Letter from Sen. Elizabeth Warren to OMB Director Mick Mulvaney (Dec. 18, 2017).

¹⁰ New York Times, Consumer Bureau's New Leader Steers a Sudden Reversal (Dec. 5, 2017) (<https://www.nytimes.com/2017/12/05/business/cfpb-mick-mulvaney.html>).

¹¹ Letter from Sen. Elizabeth Warren to OMB Director Mick Mulvaney (Dec. 18, 2017).

On December 4, 2017, you announced that you were freezing the collection of all personal information by the CFPB after reviewing two reports by the CFPB's Inspector General (IG) on the Bureau's information security controls.¹² The ability to use personally identifiable information (PII) is crucial to almost all of CFPB's actions on behalf of consumers. Without it, the CFPB is unable to resolve consumer complaints, properly examine covered entities, or take enforcement actions against financial institutions that break the law. In fact, for a time, as a result of this announcement, CFPB ceased all bank examinations and stopped reviewing evidence in enforcement actions. But neither of the two IG reports that you cited as justification for your actions recommended a complete freeze on data collection, and the Bureau had already implemented remedial action to fix all gaps mentioned in the reports.¹³ To learn more about the reasons for and consequences of your actions, I wrote a letter to you on January 4, 2018, which included a series of questions asking for greater clarity on your decision.¹⁴

On December 5, 2017, public reports indicated that you planned to hire numerous political staffers to oversee the work of career officials at the CFPB, and quoted you as claiming that civil servants "were political anyway."¹⁵ This statement – and the accompanying hiring of political appointees – undermined the statutory independence of the CFPB and of the Bureau's career civil servants, who are protected by law from having their work reassigned due to their political beliefs. On December 18, I wrote to you urging you to reverse course. I also asked you to ensure that political appointees did not trample the rights of civil servants.¹⁶

On January 3, 2018, the CFPB belatedly published its *Annual Report to Congress on College Credit Card Agreements*, an important tool for protecting students and promoting best practices for institutions of higher education and financial services providers.¹⁷ In last year's report, the Bureau included information on bank account and debit card agreements, and concluded that dozens of agreements presented "continued risk to students."¹⁸ But under your leadership in 2018, the CFPB included only the bare minimum on credit card agreements in its report, failing to address persistent problems facing students in other financial services account

¹² Letter from Sen. Elizabeth Warren to Acting CFPB Director Leandra English and OMB Director Mick Mulvaney (Jan. 4, 2018). (https://www.warren.senate.gov/files/documents/2018_01_04_Letter_to_English_and_Mulvaney_on_CFPB_Data_Collection.pdf).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Bloomberg, *Mulvaney Wants More Political Appointees in Place at CFPB* (Dec. 5, 2017) (<https://www.bna.com/mulvaney-wants-political-n73014472729/>).

¹⁶ Letter from Sen. Elizabeth Warren to OMB Director Mick Mulvaney (Dec. 18, 2017)

¹⁷ CFPB, *College Credit Card Agreements: Annual Report to Congress* (2018)

(https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_college-credit-card-agreements-report_2017.pdf) Letter from Senator Elizabeth Warren letter to OMB Director Mick Mulvaney (Jan. 19, 2018).

¹⁸ CFPB, *Student Banking: Annual Report to Congress* (December 2016)

(https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/2016_cfpb_student_banking_report.pdf)

agreements.¹⁹ On January 19, along with several of my colleagues, I sent you a letter asking for both an explanation of the process used to develop this report and an updated analysis on other financial services agreements.²⁰

In January 2018, the CFPB under your leadership took a series of actions to benefit payday lenders at the expense of vulnerable consumers. The Bureau halted implementation of a rule preventing abusive payday lending in anticipation of a rulemaking you represented would weaken it; voluntarily dismissed a case against four payday lenders who had allegedly misled customers and charged exorbitant interest rates; and halted an investigation into a lender whose abusive practices had hurt consumers.²¹ These actions reversed agency actions to protect consumers that were justified on both substantive and legal grounds, and you provided no policy rationale or analysis justifying these reversals. I wrote to you with other members of Congress on January 31, 2018, and posed a series of questions about the justification for these actions, your relationship with the payday lending industry, and your communications with industry while Acting Director of the CFPB.²²

On February 1, 2018, reports emerged that the CFPB intended to reorganize the Office of Fair Lending and Equal Opportunity (OFLEO), moving certain functions to the Office of the Director and completely stripping the Office of its supervisory and enforcement role.²³ Congress specifically directed the Bureau to create the OFLEO with oversight and enforcement powers, and the Office played a pivotal role in obtaining over \$400 million for consumers who had faced discrimination by unscrupulous lenders.²⁴ I wrote to you, along with other members of Congress on February 16, 2018, with concerns that this significant departure from the status quo and the statutory mandate would have a negative impact on the Bureau's ability to police discrimination.²⁵ As a part of that letter, I asked you a series of questions regarding any analyses done on the impact of this reorganization, the justification for the decision, and communications between the CFPB and outside entities about the reorganization.²⁶

Finally, on February 5, 2018, Reuters reported that the CFPB had halted its investigations into the massive security breach at Equifax and the company's inadequate response that has left

¹⁹ CFPB, College Credit Card Agreements: Annual Report to Congress (2018) (https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_college-credit-card-agreements-report_2017.pdf); Letter from Senator Warren letter to OMB Director Mick Mulvaney (Jan. 19, 2018).

²⁰ Letter from Senator Warren letter to OMB Director Mick Mulvaney (Jan. 19, 2018).

²¹ Letter from Sen. Elizabeth Warren, Rep. Maxine Waters, Sen. Richard Blumenthal, Sen. Jeff Merkley, Rep. Al Green, and Rep. Keith Ellison to Acting CFPB Director Leandra English and OMB Director Mick Mulvaney (Jan. 4, 2018). (https://www.warren.senate.gov/files/documents/2018_01_31_Warren_Waters_letter.pdf).

²² *Id.*

²³ Letter from Sen. Elizabeth Warren, Rep. Maxine Waters, Sen. Sherrod Brown, Rep. Elijah Cummings, Sen. Robert Menendez, *et al.*, to Acting CFPB Director Leandra English and OMB Director Mick Mulvaney (Feb. 16, 2018) (https://democrats-financialservices.house.gov/uploadedfiles/cfpb_fair_lending_bicameral_letter_-_final.pdf).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

hundreds of millions of consumers at risk.²⁷ According to the report, the CFPB had failed to take basic preliminary steps in the investigation, including issuing subpoenas or seeking sworn testimony.²⁸ And the Bureau reportedly rebuffed other banking regulators who offered to assist with on-site examinations.²⁹ I wrote to you along with over a dozen other members of the Senate on February 7, 2018, with these concerns, asking a series of questions about the CFPB's investigation into Equifax and its supervision of financial institutions through on-site bank examinations.³⁰

Inadequate Responses from the CFPB

Your responses to my nine letters with 125 substantive questions have failed to provide assurance that the CFPB is acting on behalf of ensuring that "all consumers have access to...consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive," and you have been unwilling to provide any substantive justification for many of your most questionable statements and potentially unlawful actions. Instead, you have sent a series of non-responsive, evasive, misleading, and anti-consumer letters in the past three months. I am disappointed at this response.

CFPB's Failure to Respond

You have completely failed to respond to many of my questions and concerns.

In the case of my November 27 letter regarding the conflict presented by your dual role acting as head of the CFPB, an independent agency, and Director of OMB, a department within the Executive Office of the President, you have not responded at all. In this letter, I posed 38 questions regarding the ethics problems and conflicts of interest raised by your dual role, and you have not addressed those issues.³¹

²⁷ Reuters, Exclusive: U.S. consumer protection official puts Equifax probe on ice - sources (Feb. 5, 2018) (<https://www.reuters.com/article/us-usa-equifax-cfpb/exclusive-u-s-consumer-protection-official-puts-equifax-probe-on-ice-sources-idUSKBN1FPOIZ>). Letter from Sen. Elizabeth Warren, Rep. Maxine Waters, Sen. Sherrod Brown, Rep. Elijah Cummings, and Sen. Robert Menendez to Acting CFPB Director Leandra English and OMB Director Mick Mulvaney (Feb. 16, 2018). <https://www.king.senate.gov/imo/media/doc/CFPB%20letter%20re%20Equifax%20investigation%202-7-18%20Signed.pdf>

²⁸ *Id.*

²⁹ *Id.*

³⁰ Letter from Sens. Elizabeth Warren, Brian Schatz, Robert Menendez, Sherrod Brown, et al., to Acting CFPB Director Leandra English and OMB Director Mick Mulvaney (Feb. 16, 2018) (<https://www.king.senate.gov/imo/media/doc/CFPB%20letter%20re%20Equifax%20investigation%202-7-18%20Signed.pdf>).

³¹ Letter from Sen. Elizabeth Warren to White House Counsel Don McGahn and OMB Director Mick Mulvaney (Nov. 27, 2017) (https://www.warren.senate.gov/files/documents/2017_11_27_Mulvaney_CFPB_OMB_Guidelines.pdf).

In other cases, you responded to my letters with a short reply that did not address any of my substantive questions at all. In response to a January 31, 2018, letter regarding a series of actions you took to benefit the payday lending industry at the expense of consumers, you responded merely that you “rejected [the] insinuation” that your decisions were based on anything other than the facts and law at issue, and you urged me to “discuss policy matters as” as a responsible public officer.³² This letter included 10 questions and requests for information asking for simple, factual answers to understand your interpretation of the “facts and law” brought you to your decision.³³ You ignored every question, and you provided no justification for your actions.

In another example, I wrote to you with my Senate colleagues on February 7, 2018, expressing concerns that you had slowed down or stalled the CFPB’s investigation into the Equifax breach and the company’s response.³⁴ You responded merely that “it is a matter of public record that the Bureau is looking into Equifax’s data breach and response,” and that “reports to the contrary are incorrect.”³⁵ In response to a detailed letter from me and my colleagues with 10 questions concerned with the direction of the investigation, you answered only three questions and did not address the reports that you had slowed down or stalled the investigation or my letter’s specific references to failures to take basic procedural steps or accept offers of assistance from other financial regulators. You failed to provide an adequate response to this basic request for information.

On February 16, 2018, I wrote with over a dozen members of the House and Senate regarding your decision to move the Office of Fair Lending and Equal Opportunity (OFLEO) to the Director’s office and strip it of important powers.³⁶ This letter included 14 questions and requests for information, seeking simple, factual answers to understand your decision and the underlying legal analysis and the operational considerations.³⁷ You did not respond to any of these specific questions, instead asserting with no proof that the reorganization “will not hamper” the Bureau’s enforcement and supervisory work.³⁸ You were unable or unwilling to provide any analysis or justification for that claim, though it appears to contradict the plain language of the

³² Letter from OMB Director Mulvaney to Senator Elizabeth Warren, *et al.* (Feb. 15, 2018).

³³ Letter from Sen. Elizabeth Warren, Rep. Maxine Waters, Sen. Richard Blumenthal, Sen. Jeff Merkley, and Rep. Keith Ellison to Acting CFPB Director Leandra English and OMB Director Mick Mulvaney (Jan. 4, 2018). (https://www.warren.senate.gov/files/documents/2018_01_31_Warren_Waters_letter.pdf).

³⁴ Letter from Sens. Elizabeth Warren, Brian Schatz, Robert Menendez, Sherrod Brown, *et al.*, to Acting CFPB Director Leandra English and OMB Director Mick Mulvaney (Feb. 16, 2018) (<https://www.king.senate.gov/imo/media/doc/CFPB%20letter%20re%20Equifax%20investigation%202-7-18%20Signed.pdf>).

³⁵ Letter from OMB Director Mulvaney to Senators Elizabeth Warren, Brian Schatz, *et al.* (Feb. 16, 2018).

³⁶ Letter from Sen. Elizabeth Warren, Rep. Maxine Waters, Sen. Sherrod Brown, Rep. Elijah Cummings, Sen. Robert Menendez, *et al.*, to Acting CFPB Director Leandra English and OMB Director Mick Mulvaney (Feb. 16, 2018) (https://democrats-financialservices.house.gov/uploadedfiles/cfpb_fair_lending_bicameral_letter_-_final.pdf).

³⁷ *Id.*

³⁸ Letter from OMB Director Mulvaney to Senator Warren, Representative Waters, *et al.* (Mar. 1, 2018).

Dodd-Frank statute, which states that although the Director has discretion to delegate duties to OFLEO, those duties “shall...include[e]...providing oversight and enforcement of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit...”³⁹

In response to the January 19, 2018, letter that included two requests for information regarding your failure to include important information in the Bureau’s report on College Credit Card Agreements, your response simply summarized what was in the report, and did not provide an adequate response to any of the questions my colleagues and I had posed about the process for creating the report or our request for further analysis of difficulties facing students.⁴⁰

You have stated publicly that you “will review everything we do [at the CFPB],” that “quantitative analysis should drive our decisions,” and that “data...should, and will, guide our actions.”⁴¹ I have repeatedly asked for a window into that analysis – for the results of those reviews and for the data that supports your actions, yet you have refused to provide it. Withholding this information from Congress and the public raises numerous red flags about your actions that appear to benefit industry at the expense of American consumers.

Evasive and Misleading Responses from CFPB

In other cases, you answered rather than ignored my questions. But many times when you did so, you provided misleading information or evasive answers.

For example, your response to my January 4, 2018, letter on the Bureau’s data collection freeze attempted to justify your actions by citing improper disclosures within the Bureau’s Consumer Response database and suspected breaches by financial institutions using the company portal.⁴² But your primary stated rationale for the freeze – the most recent and available Inspector General reports that reviewed CFPB cybersecurity procedures – never recommended shutting down any activities, and showed that the CFPB actually outperformed the Federal Reserve Board of Governors, the Federal Deposit Insurance Corporation, and the Securities and Exchange Commission on the quality of its cybersecurity practices.⁴³ Your answers did not justify your reliance on the Inspector General reports you initially cited and did not reveal the scope of the activities that were suspended as a result of the freeze. In addition, you failed entirely to answer any of the 19 questions and requests for information in my letter.⁴⁴

³⁹ 12 U.S.C. 5493 § (c)(2); 12 U.S.C. § 5493(c)(2)(a).

⁴⁰ Letter from OMB Director Mulvaney to Senators Elizabeth Warren, Jack Reed, *et al.* (Feb. 7, 2018).

⁴¹ Mick Mulvaney, Wall Street Journal, *The CFPB Has Pushed Its Last Envelope* (Mar. 3, 2018) (<https://www.wsj.com/articles/the-cfpb-has-pushed-its-last-envelope-1516743561>).

⁴² Letter from OMB Director Mulvaney to Senator Elizabeth Warren (Jan. 18, 2018).

⁴³ Office of Inspector General for the Board of Governors of the Federal Reserve System and the Consumer Financial Protection Bureau, 2017 Audit of the CFPB’s Information Security Program (Oct. 31, 2017) (<https://oig.federalreserve.gov/reports/cfj:J b-information-security-program-oct2017.pdf>).

⁴⁴ Letter from OMB Director Mulvaney to Senator Elizabeth Warren (Jan. 18, 2018).

In response to my December 18, 2017, letter about your efforts to politicize the statutorily independent CFPB, you responded that “other financial regulators and independent agencies have non-career staff,” so these appointments were “entirely appropriate.”⁴⁵ This response was technically correct – but misleading. My letter noted that no other financial regulator had nearly as many political appointments as you planned to bring to the CFPB, and that their appointees serve primarily as personal staff, rather than policy-making staff.⁴⁶ You did not address this break from precedent. You also failed to brief my staff, as per my request, about why and how you were modifying broad precedents established at CFPB and other financial regulators.⁴⁷

And in response to my December 18, 2017, letter raising concerns about your review of enforcement actions and about the potential conflicts among staff brought over from OMB, you admitted that you were conducting this review and stated only that “non-career staff and I have worked...to understand each specific enforcement or supervision matter.”⁴⁸ My letter included 17 questions and requests for information seeking specific information and answers on who was conducting each review, and why this review was necessary.⁴⁹ Your response addressed the review broadly, but failed to answer 14 of my specific questions that would help me and the American public understand the rationale for your actions and those of your staff.⁵⁰ In the *Wall Street Journal*, you proudly claimed that “[w]e will exercise, with humility and prudence, the almost unparalleled power Congress has bestowed on us to enforce the law faithfully.”⁵¹ But when asked to explain how your actions showed such humility and prudence, you were silent.

Anti-Consumer Responses

In a third set of cases, you did provide clear answers – only to reveal that, rather than living up to your promise that “[t]he law mandates that we enforce consumer-protection laws, and we will continue to do so under my watch,” your actions revealed that you would not be enforcing the law or acting consistent with the agency’s mission of protecting consumers.⁵²

For example, in response to the January 19, 2018, letter about the Bureau’s report on College Credit Card Agreements, you stated that the “statute does not refer to debit card or bank account agreements or other information that you and your colleagues suggest has been omitted from the Bureau’s report.”⁵³ As our letter indicated, the Bureau had included this additional information in the past, and had also determined that “agreements between colleges, financial

⁴⁵ Letter from OMB Director Mulvaney to Senator Elizabeth Warren (Feb. 15, 2018).

⁴⁶ Letter from Sen. Elizabeth Warren to OMB Director Mick Mulvaney (Dec. 18, 2017).

⁴⁷ *Id.*

⁴⁸ Letter from OMB Director Mulvaney to Senator Elizabeth Warren (Jan. 25, 2018).

⁴⁹ Letter from Sen. Elizabeth Warren to OMB Director Mick Mulvaney (Dec. 18, 2017).

⁵⁰ Letter from OMB Director Mulvaney to Senator Elizabeth Warren (Jan. 25, 2018).

⁵¹ Mick Mulvaney, *Wall Street Journal*, *The CFPB Has Pushed Its Last Envelope* (Mar. 3, 2018) (<https://www.wsj.com/articles/the-cfpb-has-pushed-its-last-envelope-1516743561>).

⁵² CFPB, *About the Bureau* (accessed March 2018) (<https://www.consumerfinance.gov/about-us/the-bureau/>).

⁵³ Letter from OMB Director Mulvaney to Senators Elizabeth Warren, Jack Reed, *et al.* (Feb. 7, 2018).

institutions, and other vendors present continued risk to students,” including “dozens of general marketing agreements that featured higher fees or fewer protections than widely available alternatives.”⁵⁴ Your letter did not address the harm to students – in fact, your response indicated no interest in what was best for students.⁵⁵

In another example, you responded to the February 16, 2018, letter regarding your decision to move the OFLEO within the Director’s office and strip it of important powers by praising your own efforts to “reduc[e] redundancy[.]”⁵⁶ But our letter asked for information about how you reached that conclusion, and whether the crucial work the OFLEO has done to help consumers who have been discriminated against would continue in the reorganized agency.⁵⁷ Your letter did not answer any of these questions or provide us with the analyses we requested to show the impacts of the changes.⁵⁸

Unanswered Questions

The questions that follow include all 105 of my questions and requests for information that you have yet to sufficiently answer. I ask that you provide full and complete answers to these questions by March 31, 2018:

A. *Record-Keeping, Transparency, and Ethics Rules*

1. What staff from OMB or elsewhere in the Executive Office of the President (EOP) have accompanied you 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?
 - 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. Have you 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? Are you being paid by OMB or by the CFPB? Are other individuals being paid by OMB or elsewhere in the EOP,

⁵⁴ Letter from Senator Warren letter to OMB Director Mick Mulvaney (Jan. 19, 2018).

⁵⁵ Letter from OMB Director Mulvaney to Senators Elizabeth Warren, Jack Reed, *et al.* (Feb. 7, 2018).

⁵⁶ Letter from OMB Director Mulvaney to Senator Warren, Representative Waters, *et al.* (Mar. 1, 2018).

⁵⁷ Letter from Sen. Elizabeth Warren, Rep. Maxine Waters, Sen. Sherrod Brown, Rep. Elijah Cummings, Sen. Robert Menendez, *et al.*, to Acting CFPB Director Leandra English and OMB Director Mick Mulvaney (Feb. 16, 2018) (https://democrats-financialservices.house.gov/uploadedfiles/cfpb_fair_lending_bicameral_letter_-_final.pdf).

⁵⁸ *Id.*

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 you from OMB being paid? Please provide answers to these questions for all individuals listed in response to question 1.

In light of your dual role, I ask that you answer the following questions:

1. What ethics requirements will apply to you in your role at the CFPB? Which of these are new requirements that did not apply to you in this role at OMB?
2. What ethics requirements will apply to any EOP staff that has accompanied you 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 you and other staff taken to comply with these requirements? What additional steps do you have planned?
4. Have you 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 you to the CFPB consulted with the Designated Agency Ethics Official at the Consumer Financial Protection Bureau to determine compliance with 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 you at the CFPB?
7. Have you or your 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?

Given the dual roles for you and your 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 you maintain offices at both the CFPB and OMB?
 - a. Will limitations be placed on where you conduct work-related activities for the CFPB and for OMB?
2. Will you use different government-issued e-mail accounts for your work at OMB and your work at the CFPB?
 - a. Have you been issued an e-mail account for his work at the CFPB?
 - b. How are you currently communicating with CFPB officials and others for CFPB-related business?

- c. How did you communicate with CFPB officials and others for CFPB-related business between November 24 and today?
 - d. Do you 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 your communications to 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 your staff use different government-issued e-mail accounts for their work at OMB and his work at the CFPB?
- a. Which members of your staff have been issued e-mail accounts for their work at the CFPB?
 - b. How are members of your 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 your 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. Have you continued to follow this practice? If so, how have you determined which matters appear on the CFPB calendar? Have you, and moving forward, will you include all calendar meetings that you 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?

B. *Data Collection*

1. Prior to November 24, what were CFPB's plans to address the recommendations provided by its Inspector General in its FISMA report? Why did you make additional changes to these plans?
- a. Why did you believe these measures were insufficient?
 - b. What steps did you take to evaluate additional options?
 - c. Which cybersecurity experts were consulted?
 - d. Which CFPB staff members were consulted?
 - e. Were any member of the Inspector General's staff consulted? If so, which ones?

2. What specific changes in examination procedures related to cybersecurity were implemented in the Division of Supervision, Enforcement and Fair Lending program in the aftermath of the December 4th announcement, and what were the impacts of these changes?
 - a. Please provide copies of any guidance given to supervision staff about changes in examination procedures.
 - b. Please describe any changes to procedures for obtaining and reviewing records in discovery precipitated by Mulvaney's December 4 announcement.
 - c. Please provide copies of any communications with regulated entities related to providing personally identifiable information to bank examiners and enforcement lawyers.
 - d. Please provide copies of all emails sent or received by Mick Mulvaney, Brian Johnson, Eric Blankenstein, Christopher D'Angelo, Patrice Ficklin, Paul Sanford, Peggy Twohig, Kristen Donoghue, Sartaj Alag, or Jerry Horton about policies related to the acquisition of personally identifiable information from November 24 to present.
 - e. Did you evaluate the impact of the new procedures on CFPB supervision and enforcement activities prior to ordering and implementing them? If so, what did this evaluation show?

3. Were any Bureau functions outside the Division of Supervision, Enforcement and Fair Lending impacted?
 - a. Are there any plans to alter the consumer complaint process?
 - b. Are there any plans to alter how the Research, Markets, and Regulation division obtains or uses consumer data?
 - c. Are there any plans to alter internal operations in the CFPB with respect to how the agency uses or deploys employees' personally identifiable information?

C. Payday Rule

1. What caused you to reverse your prior position that only Congress has the ability to delay or reverse the CFPB Payday Rule?
 - a. Please provide a list of CFPB personnel and OMB personnel who provided legal advice with respect to the Payday Rule prior to December 4, 2017, and a summary of the advice they provided.
 - b. Please provide a list of all the meetings where you, Kirsten Mork, Emma Doyle, Eric Blankenstein or Brian Johnson were present and the Payday Rule was discussed, including the date, time, and other attendees at the meeting, and a summary of the content of those meetings.

2. What analysis did the CFPB undertake before deciding to halt the Payday Rule on January 16? What did these analyses conclude about the impact of the decision on lenders and borrowers?

3. Did you or other officials meet with or communicate with representatives of the payday loan industry prior to the January 18 decision to dismiss the case against Golden Valley Lending, Inc., Silver Cloud Financial, Inc., Mountain Summit Financial, Inc., and Majestic Lake Financial? If so, please provide a list of all such meetings, and a brief discussion of their content.
4. Did you or other officials meet with or communicate with representatives of World Acceptance Corporation or the installment loan industry prior to the January 22 decision to drop the investigation into the case? If so, please provide a list of all such meetings, and a brief discussion of their content.
5. Please provide all communications related to the discussion of the Payday Rule, the dismissal of the Kansas case, and the halting of the investigation into World Acceptance Corporation, including email on personal or official accounts from custodians Mulvaney, Mork, Doyle, Blankenstein or Johnson that contain the words "payday," "Small dollar," "installment," "auto," "vehicle," "Golden Valley," "Silver Cloud," "Mountain Summit," "Majestic Lake," or "World Acceptance."

D. *Enforcement Review*

1. What is the objective of your review of enforcement matters?
 - a. Which cases among the 28 currently in litigation have you or your staff reviewed?
 - b. Who is conducting these reviews? Please provide their name, title, and job description.
 - c. What actions are you considering during your review, and what criteria are you using to determine how to proceed with these actions?
2. What additional information is under review by you or your staff?
 - a. Are you or your staff reviewing any CFPB bank examination information? If so, what is the objective of your review of examination reports?
 - b. Which examination reports have been reviewed?
 - c. Who has been involved in this review? Please provide their job descriptions.
 - d. Have the regulated entities been made aware of this review?
 - e. Has anybody taking part in the review made edits to any examination report?
3. For all personnel involved in your reviews who were not employed by the CFPB prior to November 24, please indicate whether they are a full-time CFPB employee, whether they concurrently hold any other jobs, and under what authority they were appointed.
 - a. For all involved personnel please indicate whether and when they became fully compliant with the Supplemental Standards of Ethical Conduct for Employees of the Bureau of Consumer Financial Protection.
 - b. For all involved personnel, please provide a list of entities they are disqualified from working on pursuant to 5 C.F.R. § 9401.111.

E. *Fair Lending*

1. Did the CFPB perform a legal analysis to determine whether stripping the OFLEO of its enforcement authority would hinder the CFPB's ability to carry out its statutory mandate to provide oversight and enforcement of federal fair lending laws?
2. How will bringing the OFLEO under the control of the Office of the Director modify the Bureau's decision-making process with regard to enforcement and other actions to protect consumers from unfair discrimination?
 - a. What, if any, continuing role will the OFLEO play in supporting the Bureau's enforcement of fair lending laws?
 - b. How will the reorganization affect the reporting duties for OFLEO employees, including the OFLEO Assistant Director?
 - c. After the reorganization, which officials in the Office of the Director will be consulted about OFLEO activities? Which of these officials have been hired, politically appointed, or detailed to the CFPB since November 24, 2017?
 - d. After the reorganization, which political appointees and temporarily-detailed employees will be granted veto power over OFLEO activities and decisions?
 - e. What criteria will political appointees and temporarily-detailed employees in the Office of the Director use to determine whether the Bureau will follow the recommendations of career policy experts in the OFLEO?
 - f. What actions will the Bureau take to ensure that OFLEO decisions continue to be based on the best advice of independent, expert, career policy staff?
 - g. How will the new requirements that the OFLEO report to the Office of the Director enhance the CFPB's ability to protect consumers from unfair discrimination?
3. Please describe any independent analyses, such as third-party studies, that informed the decision to bring OFLEO under the Office of the Director and strip OFLEO of its enforcement and supervisory authority.
4. Did you or any other CFPB employee consult with or discuss this reorganization with any outside entities – including lobbyists or representatives of the banking or financial services industry – prior to announcing the reorganization?
5. Did you consult with other officials, employees, or political appointees at OMB or the White House about the OFLEO reorganization prior to its announcement?
6. Is the CFPB considering any substantive changes to its approach to the enforcement of fair lending laws, including changes to the CFPB's interpretation of these laws?

F. *Equifax Investigation*

1. Is the CFPB planning to conduct on-site exams of Equifax and the other consumer reporting agencies under its supervisory authority? Has the CFPB conducted an examination of a consumer reporting agency following the Equifax hack?
2. What specific steps has the CFPB taken pursuant to its Equifax investigation? Has the CFPB issued any Civil Investigative Demands? Has the CFPB interviewed Equifax personnel? Have the CFPB personnel examined Equifax systems or gone onsite to Equifax facilities?
3. Is the CFPB coordinating with the FTC, state law enforcement officials, or other Federal regulators in their investigations?

G. Student Consumers

The CFPB must continue to shine a light on the risks to student consumers from campus financial product agreements as well as promote best practices that put students' financial interests first. As such, I request that you provide Congress the following information:

1. For all personnel involved in your reviews who were not employed by the CFPB prior to November 24, please indicate whether they are a full-time CFPB employee, whether they concurrently hold any other jobs, and under what authority they were appointed.
2. An updated analysis on college debit card and bank account agreements

H. Political Appointees

My letter of December 18, 2018 asked that you provide my staff with a briefing on your efforts to politicize the CFPB and what measures you were taking to ensure compliance with civil service laws. I ask that you provide this briefing no later than March 31, 2017.

Sincerely,



Elizabeth Warren
United States Senator