

Committee on Banking, Housing, and Urban Affairs
Nominations Hearing
July 19, 2018

Questions for Ms. Kathleen Laura Kraninger, Director-Designate, Bureau of Consumer Financial Protection, on behalf of Ranking Member Brown, Senator Catherine Cortez Masto, Senator Robert Menendez, and Senator Elizabeth Warren.:

Child Separation

In the hearing, you dodged questions about your involvement in the Administration's policy to separate children from their parents at the border, refusing to answer or using passive language to avoid describing your personal role.

- You testified that your "involvement level" on any issue "really does vary substantially based on the president's priorities, the director's priorities, the agency heads' priorities, how much authority they have." How would you characterize your involvement level on policies resulting in child separations at the border?

Response: I had no role in setting the zero tolerance policy. Since the beginning of the administration, officials within the Office of Management and Budget (OMB), including the director, the deputy director, me, and my staff, participated in meetings related to immigration and border security policy that included relevant officials across the administration. OMB has an extensive role in supporting agencies as they implement the President's priorities and agenda, which includes reviewing legislative proposals, regulatory proposals, and the availability of budgetary resources, including those regarding immigration and border security. I also testified more specifically that OMB raises questions and supports agencies in analyzing their resource needs.

- You testified that "[s]ubsequent to the attorney general's announcement [of the zero-tolerance policy], there were meetings within the administration on the general topic of the implementation, and again, the Office of Management and Budget does actively participate in those meetings." Please provide a list of the meetings that you attended, the title of the meeting, the dates of the meetings, and who else was in attendance.

Response: In light of the confidentiality interests that attach to executive branch decision-making, I am unable to answer this question.

- You testified that "[i]n terms of what generally comes before the Office of Management and Budget, it is what the agencies are formulating. They put forward what their leadership would like to pursue or they have received direction from the President about activities that they should undertake. And they are formulating the – a manner in how to address what the President's priorities are, and what he has asked of them. And then we are supporting that effort." Please describe how you "support[ed] the effort" of the Department of Homeland Security as the agency separated thousands of parents from their children at the border.

Committee on Banking, Housing, and Urban Affairs
Nominations Hearing
July 19, 2018

Response: I had no role in setting the zero tolerance policy. Since the beginning of the administration, officials within the Office of Management and Budget, including the director, the deputy director, me, and my staff, participated in meetings related to immigration and border security policy that included relevant officials across the administration. OMB has an extensive role in supporting agencies as they implement the President's priorities and agenda, which includes reviewing legislative proposals, regulatory proposals, and the availability of budgetary resources, including those regarding immigration and border security. I also testified more specifically that OMB was engaged in discussions regarding resource needs, including supporting agencies in analysis of those needs and appropriations law.

- You testified that “with respect to the IRS rule [on disclosing political donations], I was aware of it happening. I know that my staff reviewed it.” Were you aware that the child separation policy was happening? Did you or your staff review it?

Response: I was not involved in setting the policy. The IRS action is different in kind as it was undertaken through a rulemaking effort, which is why my staff reviewed it.

- You testified that “horrible disasters last fall, because there was clear need for additional resources, the Office of Management and Budget was -- was very engaged.” Were additional resources required to implement the child separation policy? If so, did the Office of Management and Budget approve or reject any requests for additional resources or play any other role in providing resources? What role did you personally play in determining whether to approve or deny any such requests?

Response: I had no role in setting the policy. Since the Office of Management and Budget (OMB) has an extensive role in supporting agencies as they implement the President's priorities and agenda, including reviewing legislative proposals, regulatory proposals, and the availability of budgetary resources, I have participated in a number of meetings on immigration and border security in that context. DHS submitted a reprogramming and transfer request to the Committees on Appropriations, Subcommittees on Homeland Security, on June 30th. I did not personally review the request, since the discussions occurred after my nomination.

- Please provide a complete description of any role you may have played in OMB budgetary or policy decisions, analyses, or recommendations related to DOJ's “Zero-Tolerance Policy,” DHS's implementation of the changes stemming from this policy, and the separation of children from their parents who were detained under such policy. Please include a list of all meetings you attended (in person or by telephone or other electronic means) related to these budgetary or policy decisions, analyses, or recommendations, the topics discussed in these meetings, and a list of all other attendees of these meetings.

Committee on Banking, Housing, and Urban Affairs
Nominations Hearing
July 19, 2018

Response: In light of the confidentiality interests that attach to executive branch decision-making, I am unable to answer this question.

- Please provide all emails and other documents related to your communications with DOJ officials related to the development and implementation of DOJ's "Zero-Tolerance Policy" and the separation of children from their parents who were detained under such policy.

Response: Any such documents would not belong to me, and, as a result, I would not have the authority to produce any such documents if they existed.

- Please provide all emails and other documents related to your communications with DHS officials regarding the DHS's role in separation of children from their parents who were detained under the DOJ Zero Tolerance policy.

Response: Any such documents would not belong to me, and, as a result, I would not have the authority to produce any such documents if they existed.

- Please provide all emails and other documents related to your communications with White House officials, including Senior Advisor to the President Stephen Miller, related to the development of the Zero Tolerance Policy, DHS's implementation of changes stemming from the Zero Tolerance Policy, or the separation of children from their parents who were detained under the DOJ Zero Tolerance policy.

Response: Any such documents would not belong to me, and, as a result, I would not have the authority to produce any such documents if they existed.

- Please provide any final or draft OMB analyses, recommendations, or budgetary or policy decisions in which you were involved related to the DOJ Zero Tolerance Policy, or related to DHS role in this policy, including DHS's role in the separation of children from their parents who were detained under the DOJ Zero Tolerance policy, and any emails, or other communications related to these final or draft recommendations, or budgetary or policy decisions.

Response: Any such documents would not belong to me, and, as a result, I would not have the authority to produce any such documents if they existed.

Puerto Rico

- Please provide a complete description of any role you may have played in OMB disaster supplemental appropriations requests to Congress, budgetary or policy decisions,

Committee on Banking, Housing, and Urban Affairs
Nominations Hearing
July 19, 2018

analyses, or recommendations related to the Trump Administration's response to Hurricane Maria. Please include a list of all meetings you attended (in person or by telephone or other electronic means) related to these disaster supplemental appropriations requests to Congress, budgetary or policy decisions, analyses, or recommendations, the topics discussed in these meetings, and a list of all other attendees of those meetings. Such documents should cover, but not be limited to, any meetings, communications, or deliberations related to the following requests and appropriations:

- October 4, 2017 requested supplemental;
- Public Law Number 115-72;
- November 17, 2017 requested supplemental; and
- Public Law Number 115-123.
- Please provide all emails and other documents related to your communications with DHS officials related to the development of disaster supplemental appropriations requests to Congress and implementation of enacted appropriations.

Response: The Office of Management and Budget has a role in reviewing disaster declarations that go to the President and putting together the supplemental requests that the administration transmits to the Congress. In my role at OMB, I supported the President in the development of the supplemental requests for Hurricanes Irma and Maria. In light of the confidentiality interests that attach to executive branch decision-making, I am unable to fulfill your request. As to the request for documents, any such documents would not belong to me, and, as a result, I would not have the authority to produce any such documents if they existed.

- Please provide all emails and other documents related to your communications with Treasury officials related to the development of disaster supplemental appropriations requests to Congress and implementation of enacted appropriations.

Response: Any such documents would not belong to me, and, as a result, I would not have the authority to produce any such documents if they existed.

- Please provide all emails and other documents related to your communications with HUD officials related to the development of disaster supplemental appropriations requests to Congress and implementation of enacted appropriations.

Committee on Banking, Housing, and Urban Affairs
Nominations Hearing
July 19, 2018

Response: Any such documents would not belong to me, and, as a result, I would not have the authority to produce any such documents if they existed.

- Please provide all emails and other documents related to your communications with Puerto Rico government officials, employees, and consultants, related to the development of disaster supplemental appropriations requests to Congress and implementation of enacted appropriations.

Response: Any such documents would not belong to me, and, as a result, I would not have the authority to produce any such documents if they existed.

- Please provide any final or draft OMB analyses, recommendations, or budgetary or policy decisions in which you were involved related to the Administration's response to Hurricane Maria, and any emails, or other communications related to these final or draft recommendations, disaster supplemental appropriations requests, or other budgetary or policy decisions.

Response: Any such documents would not belong to me, and, as a result, I would not have the authority to produce any such documents if they existed.

- Please provide all emails or other documents relating to your involvement with the Trump Administration's response to Hurricane Maria, including but not limited to: negotiations or discussions with Puerto Rico government officials, employees, and consultants regarding the intent, design, statutory language, and implementation of the community disaster loan in the Public Law Number 115-72; and negotiations or discussions with Puerto Rico government officials, employees, and consultants regarding the procedures related to Section 428 of the Stafford Act.

Response: Any such documents would not belong to me, and, as a result, I would not have the authority to produce any such documents if they existed.

Transparency

- At the hearing, you claimed that the information and documents multiple Senators were requesting about your role in the development and implementation of the child separation policy were protected by the deliberative process privilege. You also testified that the Administration was not formally invoking the deliberative process privilege and that you were not personally invoking the deliberative process privilege on the advice of counsel.

Committee on Banking, Housing, and Urban Affairs
Nominations Hearing
July 19, 2018

- As of the date of your response to the questions in this document, is the Trump Administration invoking any privilege with regard to any of the information or documents requested in the letter from Senators Warren and Brown on June 18, 2018?

Response: I am not in a position to comment on behalf of the Administration.

- As of the date of your response to the questions in this document, are you personally invoking any privilege with regard to any of the information or documents requested in the letter from Senators Warren and Brown on June 18, 2018?

Response: In light of the confidentiality interests that attach to executive branch decision-making, I am unable to provide responses to the requests for information. As to the requests for documents, any such documents would not belong to me, and, as a result, I would not have the authority to produce any such documents if they existed.

- If either you or the Trump Administration is invoking any privilege with regard to any of the documents or information requested in the June 18th letter, please describe in detail which documents and information the privilege protects and cite legal precedent for your claim that the privilege applies to such documents or information.

Response: Please see the response above.

- If neither you nor the Trump Administration is invoking any privilege with regard to the some or all of the information or documents requested in the June 18th letter, please explain why it is appropriate to withhold that non-privileged information from the Banking Committee before the Committee votes on your nomination. Please keep in mind that the material requested bears directly on your ability to manage complicated and important policies – which will be your responsibility if confirmed to run the CFPB – and that both you and the Trump Administration have specifically touted your purported management expertise as the primary reason to confirm you to this position.

Response: Please see the response above.

Committee on Banking, Housing, and Urban Affairs
Nominations Hearing
July 19, 2018

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Supervision, Enforcement and Fair Lending

- Last week, you testified that “regulation by enforcement . . . is not appropriate, and something that we would not engage in.” What does that mean?

Response: As noted in my testimony, it is critical to have clear rules so that lenders and consumers themselves are aware of the rules. Effective use of notice and comment rulemaking is essential for ensuring the proper balancing of all interests. The PHH case provides an example of regulation by enforcement, as seen in the court’s finding that: “In its order in this case, the CFPB thus discarded HUD’s longstanding interpretation of Section 8 and, for the first time, pronounced its new interpretation.” *PHH v. CFPB*, (2016).

- If you are confirmed, will CFPB open new investigations under its Unfair, Deceptive, Abusive Acts and Practices enforcement authority? If so, what criteria would you use to determine whether to open these investigations?

Response: I am firmly committed to fulfilling the Bureau’s congressional mandate in accordance with the Dodd-Frank Act. In my testimony, I committed to examining the Bureau’s history of enforcement and related litigation to ensure the Bureau effectively promotes fair lending. While I will not prejudge and cannot predict every decision that will come before me, under my stewardship, the Bureau will take aggressive action against bad actors who break the rules by engaging in fraud and other illegal activity.

- If you are confirmed, will CFPB continue to negotiate settlements or file lawsuits under its Unfair, Deceptive, Abusive Acts and Practices enforcement authority? If so, what criteria would you use to determine whether to negotiate settlements or file lawsuits?

Response: I am firmly committed to fulfilling the Bureau’s congressional mandate in accordance with the Dodd-Frank Act. In my testimony, I committed to examining the Bureau’s history of enforcement and related litigation to ensure the Bureau effectively promotes fair lending. While I will not prejudge and cannot predict every decision that will come before me, under my stewardship, the Bureau will take aggressive action against bad actors who break the rules by engaging in fraud and other illegal activity.

- If you are confirmed, will CFPB continue to prosecute lawsuits already brought under its Unfair, Deceptive, Abusive Acts and Practices enforcement authority? If so, what criteria would you use to determine whether to prosecute lawsuits?

Committee on Banking, Housing, and Urban Affairs
Nominations Hearing
July 19, 2018

Response: I am firmly committed to fulfilling the Bureau's congressional mandate in accordance with the Dodd-Frank Act. In my testimony, I committed to examining the Bureau's history of enforcement and related litigation to ensure the Bureau effectively promotes fair lending. While I will not prejudge and cannot predict every decision that will come before me, under my stewardship, the Bureau will take aggressive action against bad actors who break the rules by engaging in fraud and other illegal activity.

Operations

In nominating you, the White House touted your experience in managing agencies' budgets, including "the Bureau of Consumer Financial Protection." The Administration's FY2019 budget request contemplated a 23% cut in the Bureau's budget authority from 2019 projected levels.

- What specific cuts did you envision to meet that budget target?

Response: The Administration's Fiscal Year 2019 Budget was the President's budget request, not mine. It also had no actual effect on the agency. I pledge that I will look carefully at every line item within the Bureau's budget, should I be confirmed. I believe there are opportunities for efficiency.

- If you did not have specific budget cuts in mind, how did you determine that a 23% cut was appropriate and consistent with fulfilling the Bureau's mission?

Response: The Administration's Fiscal Year 2019 Budget was the President's budget request, not mine. It also had no actual effect on the agency. I pledge that I will look carefully at every line item within the Bureau's budget, should I be confirmed. I believe there are opportunities for efficiency.

When Senator Tester asked you whether you intended to keep political appointees, you volunteered that you would be open to dismissing civil servants, saying "I'm going to take every staff member individually, have a conversation with them to understand what they've been working on and what they'd like to continue to work on, and – but I have not prejudged having political or career staff continue."

- Which career staff do you intend to interview?

Response: As I noted in my testimony, I have not committed to any staffing changes, but can assure you that I will comply with all applicable laws and agreements in this area. Upon my arrival at the Bureau, I look forward to meeting with as many members of the staff as possible. While I will meet with the leadership teams of every division early on, I intend to meet with staff across the organization at all levels on an ongoing basis.

- What rubrics will you use to evaluate them?

Committee on Banking, Housing, and Urban Affairs
Nominations Hearing
July 19, 2018

Response: With the context provided in the preceding answer, I will approach the organizational structure and the staff with an open mind. My first interactions will be focused on listening to them rather than “evaluating them” – asking for their perspectives broadly on the Bureau’s operations and mission effectiveness.

- Do you commit to complying with NTEU-CFPB collective bargaining agreement in reassigning or pursuing personnel action against any bargaining unit employee?

Response: As I noted in my testimony, I have not committed to any staffing changes, but can assure you that I will comply with all applicable laws and agreements in this area.

- Do you commit to complying with all civil service laws in reassigning or pursuing personnel action against any non-bargaining unit civil servant?

Response: As I noted in my testimony, I have not committed to any staffing changes, but can assure you that I will comply with all applicable laws and agreements in this area.

Typically, independent regulators have modest political staffs. Some regulators, such as the Office of the Comptroller of the Currency, have no Schedule C appointees of any kind. 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. None has a political General Counsel.

- Do you think it is appropriate that OMB Director Mulvaney has deviated from the typical practice for independent financial regulators and added more than ten political appointees to the CFPB in senior roles?

Response: As noted in my previous answer, I have not made any staffing decisions. It would be inappropriate and premature to make any staffing decisions prior to confirmation and the opportunity to meet with staff.

- Will you commit to removing these new political appointees and depoliticizing the agency as it was under former Director Cordray?

Response: As noted in my previous answer, I have not made any staffing decisions. It would be inappropriate and premature to make any staffing decisions prior to confirmation and the opportunity to meet with staff.

Accountability

Other than the CFPB, there are four other federal banking regulatory agencies: the OCC, the Federal Reserve, the FDIC, and the NCUA.

Committee on Banking, Housing, and Urban Affairs
Nominations Hearing
July 19, 2018

- Are any of these other banking regulatory agencies funded through the congressional appropriations process?

Response: The prudential regulatory agencies you mentioned are funded through industry assessments, and in the case of the Federal Reserve, open market operations. Other agencies, which are product regulators, are appropriated.

- Are “major” rules issued by any of these other banking regulatory agencies subject to congressional approval before they take effect?

Response: At this time, no major rule issued by a federal agency is subject to legislative approval before the rule takes effect.

- Since the CFPB was created by Congress, how many reports relating to the CFPB has the Federal Reserve’s Inspector General issued?

Response: It is my understanding that the Inspector General has issued 64 reports about the Bureau.

- The CFPB Director must testify before Congress four times a year. Are the heads of the OCC, FDIC, and NUCA subject to a similar requirement?

Response: I am not familiar with the specific testimonial requirements for the agencies you mentioned, although I am aware that the heads of other agencies, such as the Federal Reserve and Department of the Treasury must testify multiple times a year.

- The CFPB’s rules may be vetoed by the Financial Stability Oversight Council (FSOC). Are rules issued by any of the other banking regulators subject to an FSOC veto?

Response: At this time, the FSOC set aside does not apply to any of the other financial services regulators.

Research, Markets and Regulations

In your opening statement, you said that you would prioritize ensuring that the Bureau makes “robust use of cost benefit analysis” as required by Congress. As you correctly identified, Dodd-Frank requires CFPB rules to undergo cost-benefit analysis, which the Bureau has done for every CFPB rule that has been finalized.

- What, if any, shortcomings have you identified in the cost-benefit analyses that have accompanied CFPB rules?

Committee on Banking, Housing, and Urban Affairs
Nominations Hearing
July 19, 2018

Response: As I discussed in my testimony, I am committed to data-driven decision-making. Under my leadership, that would be a focal point at the Bureau – not just as it pertains to rulemaking actions. A direct response to this question could inappropriately influence Bureau rulemakings – whether already in effect as it pertains to enforcement, in the notice and comment process under active consideration, and being reassessed pursuant to the Dodd-Frank Act requirements. Should I be confirmed, I am committed to transparent processes and data-driven decision-making.

- Do you support OMB Director Mulvaney’s proposal that CFPB establish a redundant office of cost-benefit analysis within the Office of the Director?

Response: As noted above, I am committed to data-driven decision-making – not just as it pertains to rulemaking. More specifically to the office of cost-benefit analysis, it would be inappropriate and premature to make any staffing or organizational decisions prior to confirmation and the opportunity to meet with staff. I have noted that I will approach the organizational structure with an open mind.

You say in your testimony that the “the bureau would limit data collection only to what is required under law and is necessary to carry out its mission and ensure that the data is protected.” What data that the Bureau now collects will no longer be collected under this standard? For the categories of data that the agency collects, please refer to the Government Accountability Office’s 2014 report titled Consumer Financial Protection Bureau: Some Privacy and Security Procedures for Data Collection Should Continue Being Enhanced.

Response: As noted in my testimony and other responses to questions for the record, limiting data collection in the manner I have pledged is consistent with supporting robust use of cost-benefit analysis and a commitment to data-driven decision-making. To the extent that the data is supporting decision-making, the data collection would be needed and required. Further, it is important to note the many sources of evidence available to the Bureau beyond the entities that the Bureau is supervising directly. For example, data that comes through requests for information that are out to the public. The Bureau must recognize its profound duty to the American people to protect the data in its possession.

In your testimony and in response to questions from Senator Toomey, you expressed the importance of the Administrative Procedure Act rulemaking process, including notice and comment. The CFPB’s rule on Payday, Vehicle Title, and Certain High-Cost Installment Loans used was promulgated using that process. Agency staff considered more than a million comments over five years and the final rule had significant differences from the proposal. But, before the rule was ever able to meaningfully go into effect, the CFPB under OMB Director Mulvaney announced his intent to revisit it.

Committee on Banking, Housing, and Urban Affairs
Nominations Hearing
July 19, 2018

- Do you support revisiting the payday rule? If so, please describe the specific defects with the notice and comment process for the first payday rulemaking. If not, how do you reconcile your view of the importance of the notice and comment process with your willingness to reopen a rule that has gone through notice and comment but hasn't been allowed to go into effect?

Response: The Bureau's Payday, Vehicle Title, and Certain High-Cost Installment Loans rulemaking is actively under reconsideration, and it is not appropriate for me to comment on it. I understand the point you are making and, if confirmed, pledge to examine this issue closely.

Miscellaneous

- OMB Director Mulvaney has been in charge of the CFPB for eight months. Can you identify any actions he has taken that you disagree with and explain why you disagree with them?

Response: Based on the information that is available to me at this time, I cannot identify any actions that Acting Director Mulvaney has taken with which I disagree. I have pledged to approach organizational and staffing structures with an open mind as well as not to prejudge any matter that should come before me if confirmed.

You told the Committee that your first priority would be to make sure the CFPB is "transparent and fair, ensuring its actions empower consumers to make good choices and provide certainty for marketplace participants." The Bureau is required by Dodd-Frank to accept complaints from individual consumers and since its launch has made these complaints public, providing increased transparency to the marketplace. Information gleaned from the database has empowered consumers to make more informed choices in the financial marketplace, provided businesses with insight into potential partners and allowed researchers to have real-time insight into trends in the market. The transparency has also incentivized financial institutions to be responsive to their customers. Despite this, OMB Director Mulvaney has threatened several times to take down the public-facing consumer complaint database, hiding this crucial information from those who can use it.

- Will you commit to keeping the database public? If not, please explain how it would be more "transparent" or how it would "empower consumers" to hide this information from them?

Response: As I have previously stated, I will not prejudge any decision that will come before me at the Bureau, including whether to keep the consumer complaint database public. I am aware of the statutory responsibility for the Bureau to collect and track consumer complaints. If confirmed, I will fully examine this issue and all appropriate

Committee on Banking, Housing, and Urban Affairs
Nominations Hearing
July 19, 2018

considerations with a focus on the ensuring the Bureau is transparent and accountable to the American people for its actions.