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United States Senate
COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

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February 5, 2020

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

Dear Director Kraninger:

We write regarding the process by which you selected the members of the Consumer Financial Protection Bureau's (Bureau) Taskforce on Federal Consumer Law (Taskforce). The Bureau has stated that the Taskforce is intended to provide recommendations on how to harmonize, modernize, and update federal consumer financial laws and regulations. But instead of selecting a diverse group of professionals to provide you with objective recommendations, you stacked the Taskforce with representatives of payday lenders, Wall Street banks, and other industry interests.

Indeed, the members you selected make clear that the Taskforce is just a pretext to gut regulations and protections for consumers. Todd Zywicki, whom you selected to Chair the Taskforce, has called the Bureau a "tragic failure"¹ and has argued that the 2008 financial crisis was "not a crisis of consumer protection."² He has been a director of Global Economics Group, a consulting firm hired by Visa, Bank of America, and Citigroup to influence the Bureau and other regulatory agencies.³ Mr. Zywicki also was paid \$500 an hour to help defend Morgan Drexen, a debt relief company, from a Bureau investigation.⁴ That company eventually shut down after it was caught fabricating evidence, but not before it had scammed consumers out of more than \$130 million.⁵

¹ Lorraine Woellert and Josh Dawsey, "Trump's allies building case to oust consumer protection head," Politico (Feb. 6, 2017), available at <https://www.politico.com/story/2017/02/trump-richard-cordray-consumer-financial-protection-bureau-234699>.

² Zywicki, Todd, "Let's Treat Borrowers Like Adults," Wall Street Journal (Jul. 8, 2009), available at <https://www.wsj.com/articles/SB124701284222009065>.

³ See Fang, Lee, "The Scholars Who Shill for Wall Street," The Nation (Nov. 11, 2013), available at <https://www.thenation.com/article/archive/scholars-who-shill-wall-street/>.

⁴ See *Pisinski and Morgan Drexen, Inc. v. CFPB*, Case No. 1:13-cv-01112 (D.D.C. filed Jul. 22, 2013), Declaration of Todd Zywicki (DE 3-4).

⁵ See <https://www.consumerfinance.gov/about-us/blog/debt-settlement-company-morgan-drexen-is-no-longer-in-business-what-you-should-know/>.

The Taskforce's other members have also made their money representing payday lenders, banks, and other regulated industries:

- Howard Beales has been described by the Wall Street Journal as “an academic whose studies have been used by a tobacco company and consumer-goods makers to fight federal regulations.”⁶ Like Mr. Zywicki, Mr. Beales also works for a consulting firm where he sells his “expertise” to industry.⁷ He recently provided an “expert” opinion on behalf of a payday lender that the Bureau had sued, arguing that payday loans with interest rates of up to 448 percent⁸ were “beneficial to consumers.”⁹
- Since retiring from the Federal Reserve Board, Thomas Durkin has partnered with Mr. Zywicki to pen articles and op-eds advocating for the rollback of financial regulation and in favor of payday loans, or as he called them, “legal, high-cost” credit options.¹⁰
- Jean Noonan traded in her work at the Federal Trade Commission to work as an attorney at a corporate law firm that represents payday lenders that the Bureau has investigated or sued for ripping off consumers.¹¹
- William MacLeod also traded in his FTC experience to work at a law firm where he defends corporations from government investigations, and, in his words, has “resolutely fought against onerous regulations.”¹²

The pro-industry, deregulatory makeup of the Taskforce is no accident. It is our understanding that the Bureau rejected at least five qualified consumer finance experts with substantial research, scholarship, and record of public and academic service through a hiring process that was not fair, credible, or transparent.

We understand that of these five consumer finance experts, the Bureau only interviewed two applicants. During one interview, an applicant directly asked, but the Bureau could not state, whether the position was as a volunteer (typical for an advisory committee position) or as Bureau employee. Another applicant reported that they were subject to hostile questioning by Christopher Muffarige, one of your political appointees, to determine their stance on deregulation. That applicant complained to both you and the Bureau ombudsman that the

⁶ Glenn R. Simpson and Gordon Fairclough, “New FTC Chief is Expected to Name Regulatory Skeptic to Consumer Post,” Wall Street Journal (May 31, 2001), available at <https://www.wsj.com/articles/SB991260563410239800>.

⁷ <https://www.nera.com/experts/dr-howard-beales.html>.

⁸ See *CFPB v. Think Finance, LLC*, Case No. 4:17-cv-00127-BMM (D. Bk. Mt. filed Nov. 15, 2017), available at https://files.consumerfinance.gov/f/documents/cfpb_think-finance_complaint_112017.pdf.

⁹ See *In re Think Finance, LLC*, Case No. 17-133964-hdh11 (N.D. Tex. Oct. 11, 2018), DE 1069 at 48:12-13.

¹⁰ See https://www.researchgate.net/scientific-contributions/79382238_Thomas_A_Durkin; Todd Zywicki and Thomas Durkin, “Why Everything Elizabeth Warren Told You about Consumer Credit is Wrong,” *Forbes* (Oct. 10, 2014), available at <https://www.forbes.com/sites/realspin/2014/10/10/why-everything-elizabeth-warren-told-you-about-consumer-credit-is-wrong/#256cd7e0301f>.

¹¹ See <https://www.hudsoncook.com/practices/government-investigations-examinations-enforcement/>.

¹² See <https://www.kelleydrye.com/Our-People/William-C-MacLeod>.

questions were inappropriate and that “[n]othing in the announcement indicated that applicants’ views on deregulation were a criterion.”¹³ To date, you have not responded to that letter.

By contrast, the Bureau appears to have bent the rules for the Taskforce members it did select. In addition, it appears that the Bureau may have set up the Taskforce to evade the Federal Advisory Commission Act, 5 U.S.C. App., which Congress enacted to ensure that advisory committees are “objective and accessible to the public,” and which also allow for dissenting opinions.¹⁴

Based on significant concerns about the Taskforce’s formation, composition, and the selected Taskforce members’ conflicts-of-interest, we question the legitimacy of this Taskforce and any of its future recommendations or conclusions. We ask that you immediately suspend the Taskforce and provide answers to the following questions by **February 19, 2020**:

1. Is the Taskforce subject to the Federal Advisory Commission Act? If not, why did you set up the Taskforce to fall outside of the Federal Advisory Commission Act?
2. Are Taskforce members volunteers, contractors, or government employees?
3. What is the statute or regulation under which Taskforce members were appointed or employed?
4. If a government employee, provide the following information (as reflected on SF-50, Notification of Personnel Action):
 - a. What is the Legal Authority for the hiring (5-C)?
 - b. What is the Position Title and Number (7)?
 - c. What is the Pay Plan (8)?
 - d. What is the Occupational Code (9)?
 - e. What is the Grade or Level (10)?
 - f. What is the Step or Rate (11)?
 - g. What is the Total Salary (12)?
 - h. What is the Tenure (24)?
 - i. What is the Work Schedule (32)?
 - j. What is the Part-Time Hours Per Biweekly Pay Period (33)?
 - k. What is the Position Occupied (34)?
 - l. What is the FLSA Category (35)?
 - m. What is the Duty Station (39)?
5. Are Taskforce members retaining, or allowed to retain, outside employment? If so, state any limitations to their outside employment and how are they documented.
6. Will Taskforce members receive compensation? If so, state their compensation.
7. Were there any ethics determinations to treat Taskforce members as Special Government Employees? If yes:

¹³ See Nov. 26, 2019 letter to Director Kraninger, on file with Senate Committee on Banking, Housing, and Urban Affairs.

¹⁴ <https://www.gsa.gov/policy-regulations/policy/federal-advisory-committee-act-faca-management-overview>.

- a. Who or what entity made that determination?
 - b. What is the Bureau's good faith basis for believing that Taskforce members will not work more than 130 days in a 365-day period?
8. Has the Bureau provided ethics waivers to any Taskforce Members? If so, please state whether the waivers are under:
- a. 18 U.S.C. § 208(b)(1);
 - b. 18 U.S.C. § 208(b)(3);
 - c. Executive Order 13770;
 - d. An authorization under 5 C.F.R. § 2635.502(d); or
 - e. Other.
9. Produce the financial disclosures and ethics waivers for all Taskforce members.
10. Has the Bureau consulted with the Office of Government Ethics on waivers for Taskforce members?
11. For each Taskforce member, state the date and location of their interview and identify the Bureau employees who interviewed them.
12. Did the Bureau conduct structured interviews of Taskforce applicants, and if so, did the Bureau maintain the grades and any interview notes taken by Bureau employees conducting the interviews?

Thank you for your attention to this important matter. We look forward to your response.

Sincerely,



Sherrod Brown
U.S. Senator



Elizabeth Warren
U.S. Senator