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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

GREGG RICHARD, STAFF DIRECTOR
LAURA SWANSON, DEMOCRATIC STAFF DIRECTOR

May 19, 2020

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

Dear Director Kraninger:

We write regarding your attempts to defend the corrupt, flawed rulemaking process and actions by the Administration's political appointees concerning a new Consumer Financial Protection Bureau (CFPB) Payday Rule. We wrote you on May 4, 2020, about an internal memorandum by a senior CFPB career employee that describes persistent, repeated interference and attempts by CFPB political appointees to manipulate or misinterpret economic research for the payday rulemaking.¹ That memorandum provided specific details, identifying individuals, dates, and misconduct that appears to violate the Administrative Procedure Act's requirements for agency rulemakings.²

In light of these disturbing revelations, we asked you to halt work on the current Payday Rule and restart the rulemaking process. Additionally, members of Congress from both the Senate and the House of Representatives have asked the CFPB's Inspector General to commence a formal investigation into the CFPB's rulemaking process for the new Payday Rule and whether the CFPB misled Congress about that process.³

Your dismissive response to the serious, extensive, and well-documented charges in the memorandum is alarming.⁴ You did not address any of the specific misconduct recounted in our May 4, 2020 letter, or the more extensive misconduct described in the memorandum. Instead,

¹ May 4, Letter from Sen. Brown and 11 other Senators to Dir. Kraninger, *available at* <https://www.banking.senate.gov/newsroom/minority/brown-colleagues-urge-the-cfpb-to-halt-work-on-the-payday-rule-and-restart-the-rulemaking-process>.

² Aug. 9, 2019 email and attached internal memorandum (Bureau Memo), *available at* <https://int.nyt.com/data/documenthelper/6918-jonathan-lanning-cfpb-payday-rule/bfcc48b9ea9238728da2/optimized/full.pdf#page=1>.

³ May 13, 2020 Letter from Sen. Jones, Sen. Brown, and other Senators to CFPB Inspector General, *available at* <https://www.jones.senate.gov/newsroom/press-releases/senator-doug-jones-calls-for-investigation-into-improper-political-influence-on-repeal-of-federal-payday-lending-rule>; <https://www.nytimes.com/2020/05/01/business/cfpb-payday-lending-democrats.html>.

⁴ May 18, 2020 Letter from Dir. Kraninger to Sen. Brown and other Senators, attached hereto.

you attempted to recast this conduct as simply “views and ideas competing for consideration,” “informed debate and sometimes friction,” and “rigorous policy evaluation.”⁵

Your response provides a gross misrepresentation of the corrupting role of CFPB political appointees described in the memorandum. “[I]gnoring the majority of the available research, and handpicking studies that support a specific conclusion,” as described in the memorandum,⁶ is not “ideas competing for consideration.” Political appointees pushing career staff to “ignore” research and analysis because a political appointee “doesn’t agree with them,” as described in the memorandum,⁷ is not “informed debate.” And relying on study findings that are contradicted by the underlying data or studies written by industry-funded researchers, as described in the memorandum,⁸ is not “rigorous policy evaluation.” None of this conduct should make you “proud.”

Your response suggests you condone the conduct of the political appointees who worked under you and during Mr. Mulvaney’s tenure as acting Director. It also strengthens the case that, from the outset, you and Mr. Mulvaney had predetermined that you would repeal the 2017 Payday Rule and its protections for consumers—and that to do so, you were willing to find evidence in support of your conclusion even if that meant ignoring any research, data, or legal analysis that did not support this outcome.

As you note in your letter, ultimately you will determine whether to proceed with the issuance of a final Payday Rule. We ask that you restart the rulemaking or, at a minimum, delay issuing a final Payday Rule until the allegations of political interference, manipulation of research, and other conduct that appears to violate the Administrative Procedures Act have been investigated by the CFPB’s Inspector General. Moving forward with this rule does not meet your so-called commitment to a “rigorous policy evaluation,” nor could such a rule withstand judicial scrutiny.

Sincerely,

/s/ Sherrod Brown
Sherrod Brown
United States Senator

/s/ Brian Schatz
Brian Schatz
United States Senator

/s/ Elizabeth Warren
Elizabeth Warren
United States Senator

/s/ Richard J. Durbin
Richard J. Durbin
United States Senator

/s/ Tina Smith
Tina Smith
United States Senator

⁵ *Id.*

⁶ *See* Bureau Memo Timeline at 1/10/19.

⁷ *Id.* at 5/21/19.

⁸ *Id.* at 9/25/18 (“Mann’s memo(s) showing his assertions are contradicted by his data) and 5/16/19 (same); 2/25/19 (discussing payday lending lawyer writing academic studies); *see also*

<https://www.washingtonpost.com/business/2019/02/25/how-payday-lending-industry-insider-tilted-academic-research-its-favor/>.

Bureau of Consumer Financial Protection
1700 G Street NW
Washington, D.C. 20552



May 18, 2020

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing and Urban Affairs
United States Senate
534 Dirksen Senate Office Building
Washington, DC 20510

Dear Ranking Member Brown:

I write in response to your letter of May 4, 2020 based on a report in *The New York Times* regarding the Consumer Financial Protection Bureau's (Bureau's) rule on Payday, Vehicle Title, and Certain High-Cost Installment loans. Unfortunately, that reporting does not represent the robust process the Bureau engaged in to develop the 2019 Notice of Proposed Rulemaking (NPRM) much less the Bureau's process to consider public comments and finalize any rule.

In January 2018, the Bureau announced that it would undertake a rulemaking process to reconsider the November 2017 rule. Between January 2018 and February 2019, the Bureau thoroughly reviewed the evidence and legal analysis that underpinned the 2017 rule. On February 6, 2019, the Bureau released an NPRM seeking public review and comment on two proposed, preliminary determinations: first, the Bureau determined that the evidence underlying the identification of the unfair and abusive practice in the Mandatory Underwriting Provisions was not sufficient (more specifically, not sufficiently robust and reliable in light of the dramatic impacts the 2017 rule would have on consumers and the payday market); and second, the Bureau determined that the legal analysis underlying the 2017 Payday Rule for ascertaining whether a practice is unfair or abusive used a problematic approach. The Bureau explained the bases for these determinations and set a 90-day comment period. The Bureau received almost

200,000 public comments during this time, which have been posted to the public docket for this rulemaking. These comments include several hundred detailed comments from consumer groups, trade associations, non-depository lenders, banks, credit unions, research and advocacy organizations, members of Congress, industry service providers, fintech companies, Tribal leaders, faith leaders and coalitions of faith leaders, and State and local government officials and agencies. We also considered substantive comments received after the comment period closed, comments which of course were included in the public docket.

The Bureau has been engaged in a full consideration of the comments received, including comments addressing the initial economic analysis set forth in the NPRM. Upon my determination, the Bureau will issue a final rule on the basis of the record before the agency. And upon that basis, I will defend the agency's action.

I am immensely proud of the staff of the Bureau and continually impressed by their knowledge, passion, and dedication to the agency's mission. Within any organization, there will be differing opinions and viewpoints among staff. As such, I imagine there have been debates among staff in your offices and within *The New York Times* newsroom. With any major decision of the Bureau, as well as countless subsidiary decisions, there are often views and ideas competing for consideration. This results in thorough and informed debate and sometimes friction among Bureau staff of all levels, including among both career and political appointees. Staff at the Bureau know that I welcome this debate because rigorous policy evaluation and development generate better decisions and outcomes. They also respect that the decision regarding the agency's action, after considering the best advice and analysis the staff brings forward, ultimately rests with me as Director.

Should you have any questions about this response, please do not hesitate to contact me or have your staff contact Kate Fink in the Bureau's Office of Legislative Affairs. Ms. Fink can be reached at (202) 435-7532.

Sincerely,

A handwritten signature in blue ink that reads "Kathleen L. Kraninger". The signature is written in a cursive, flowing style.

Kathleen L. Kraninger
Director

cc: The Honorable Elizabeth Warren, United States Senator
The Honorable Doug Jones, United States Senator
The Honorable Chris Van Hollen, United States Senator
The Honorable Catherine Cortez Masto, United States Senator
The Honorable Tina Smith, United States Senator
The Honorable Jack Reed, United States Senator
The Honorable Brian Schatz, United States Senator
The Honorable Jon Tester, United States Senator
The Honorable Robert Menendez, United States Senator
The Honorable Richard J. Durbin, United States Senator
The Honorable Mark R. Warner, United States Senator