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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

GREGG RICHARD, STAFF DIRECTOR
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December 18, 2019

Comptroller General Gene Dodaro
Government Accountability Office
441 G St., NW
Washington, D.C. 20548

Dear Comptroller General Dodaro:

We write to request that the Government Accountability Office (GAO) investigate the effectiveness of the Consumer Financial Protection Bureau's (Bureau) oversight and enforcement of fair lending laws. After Director Cordray resigned in November 2017, Acting Director Mulvaney and Director Kraninger reorganized the Bureau's Office of Fair Lending and Equal Opportunity (Office of Fair Lending), stripped it of its supervision and enforcement duties, reassigned attorneys with fair lending expertise to other offices, and to date have brought only one fair lending enforcement action, raising grave concerns about whether the Bureau is fulfilling its statutory obligations.

Federal agencies' failure to effectively enforce fair lending laws enabled predatory lending practices that targeted racial and ethnic minorities, fueled the foreclosure crisis, and stripped wealth from Black and Latino homeowners. In a 2009 report, GAO found that federal oversight of fair lending laws was inconsistent, fragmented, and resulted in "relatively few" fair lending cases.¹ That report listed various reasons why federal enforcement agencies had resolved so few cases, including data limitations, resource constraints, and difficulties in recruiting and retaining staff with specialized expertise in fair lending laws.² GAO recommended that Congress: (1) consider amending the Home Mortgage Disclosure Act (HMDA) to collect additional data points; and (2) take steps, as part of reforms of the financial system, to "ensure that consumers are adequately protected, that laws such as the fair lending laws are comprehensively and consistently applied, and that oversight is efficient and effective."³

¹ GAO-09-704, Fair Lending, Data Limitations and the Fragmented U.S. Financial Regulatory Structure Challenge Federal Oversight and Enforcement Efforts (July 2009) (GAO 2009 Report), *available at* <https://www.gao.gov/new.items/d09704.pdf>.

² *Id.* at 1.

³ *Id.* at 65.

In response to the financial crisis, in 2010 Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).⁴ To ensure there were dedicated resources for enforcing fair lending laws, the Dodd-Frank Act mandated that the Bureau Director establish an “Office of Fair Lending and Equal Opportunity” (Office of Fair Lending) that was responsible for “oversight and enforcement” of fair lending laws.⁵ The Dodd-Frank Act also required the Office of Fair Lending to publish an annual report so that Congress could ensure the Bureau was “fulfill[ing] its fair lending mandate.”⁶

In 2011, Director Cordray established the Office of Fair Lending as part of the Bureau’s Division of Supervision, Enforcement, and Fair Lending (SEFL) and staffed it with attorneys and other professionals with expertise in fair lending laws. During his tenure, the Office of Fair Lending carried out all four its statutory functions by⁷:

- Helping design specialized oversight and training that supported CFPB examiners, and bringing 14 public enforcement actions that secured more than \$600 million in restitution and more than \$38 million in civil penalties;
- Referring 101 cases involving a pattern or practice of discrimination to the Department of Justice;
- Working with private industry, fair lending, civil rights, and consumer and community advocates to promote fair lending compliance and education; and
- Submitting annual reports to Congress detailing its fair lending work.⁸

In sum, Director Cordray established, organized, and staffed the Office of Fair Lending consistent with the Dodd-Frank Act and GAO’s 2009 recommendations. The Office of Fair Lending’s record—including the number of enforcement actions, relief provided to consumers, oversight role, and referrals to DOJ—reflected its effectiveness in carrying out its fair lending mandate.

Subsequent leadership, however, crippled the Office of Fair Lending. Acting Director Mulvaney and Director Kraninger stripped the Office of Fair Lending of its supervisory and enforcement duties. They also moved the Office of Fair Lending from the SEFL Division—where it was housed with the other offices conducting the Bureau’s enforcement and oversight work—to the Director’s Office, where it was subsumed into the Office of Equal Opportunity and Fairness, an internal office charged with handling discrimination complaints at the Bureau. The attorneys and other professionals with specialized expertise in fair lending laws who had worked in the Office of Fair Lending were reassigned to other offices, and those who left the Bureau were not replaced.

⁴ Pub. Law 111-203 (Jul 21, 2010).

⁵ Dodd-Frank Act §§ 1013(c)(1), (c)(2)(A).

⁶ *Id.* § 1013(c)(2)(D).

⁷ *Id.* § 1013(c)(2)(A) – (D).

⁸ See generally Fair Lending Reports of the Bureau of Consumer Financial Protection (2012 – 2018), available at <https://www.consumerfinance.gov/data-research/research-reports/?topics=fair-lending>.

Mr. Mulvaney’s and Ms. Kraninger’s actions had a clear result—the Office of Fair Lending’s enforcement of fair lending laws has ground to a halt. For more than a year-and-a half—from December 2017 to June 2019—the Bureau did not bring a single fair lending enforcement action. Overall, during the two years of their leadership, the Bureau brought just one fair lending enforcement action for violation of the Home Mortgage Disclosure Act (HMDA); it did not bring any enforcement actions for violation of the Equal Credit Opportunity Act (ECOA). The Bureau provided zero restitution to victims of discrimination and referred just two cases involving a pattern or practice of alleged discrimination to the Department of Justice.⁹ The Bureau’s supervisory schedule is not public so it is impossible to know whether the agency continues conduct examinations for compliance with fair lending laws or whether those examinations are being conducted with equal frequency and rigor as they were before Mr. Mulvaney and Ms. Kraninger took control.

	# of ECOA actions	# of HMDA actions	# of referrals to DOJ	Total redress to harmed consumers	Total civil penalties
2012 – Nov. 2017*	11	3	101	\$628,730,000	\$42,809,000
Dec. 2017 – Present	0	1	2**	-	\$1,750,000

Chart based on data in Bureau Annual Fair Lending Reports.¹⁰

* Includes actions against American Express that included non-fair lending claims in 2012 and \$95 million in restitution provided during Bureau’s review but not part of consent order in 2017.

** Includes only data through 2018.

Director Kraninger also is currently in the process of weakening HMDA’s reporting requirements. In May 2019, the Bureau announced an advanced notice of proposed rulemaking that would eliminate certain data points, such as debt-to-income ratio and credit score, that the Bureau added in a 2015 rulemaking. These are some of the same data points that, in 2009, GAO recommended collecting in order to “facilitate” federal enforcement of fair lending laws.¹¹

In sum, Acting Director Mulvaney and Director Kraninger have taken affirmative steps to undermine the Office of Fair Lending’s effectiveness and ability to conduct oversight and enforcement of fair lending laws. Their actions—such as weakening of HMDA reporting

⁹ See Fall 2018 Semi-Annual Report of the Bureau of Consumer Financial Protection, *available at* https://files.consumerfinance.gov/f/documents/cfpb_semi-annual-report-to-congress_fall-2018.pdf; Fair Lending Report of the Bureau of Consumer Financial Protection, June 2019 (corrected Sept. 2019) at 30, *available at* https://files.consumerfinance.gov/f/documents/201909_cfpb_corrected-2018-fair-lending_report.pdf.

¹⁰ Fair Lending Reports of the Bureau of Consumer Financial Protection (2012 – 2019), *available at* <https://www.consumerfinance.gov/data-research/research-reports/?topics=fair-lending>.

¹¹ GAO 2009 Report at 65.

requirements and reassigning attorneys with specialized fair lending expertise—are contrary to GAO’s 2009 findings and recommendations. Their reorganization and dismantling of the Office of Fair Lending is contrary to Congress’s intent that the Bureau establish an Office of Fair Lending with specific duties, including enforcement and oversight of fair lending laws. Their record—a single enforcement action and just two referrals to DOJ—reflects a dereliction of their duty to protect consumers from unlawful discrimination.

We therefore request that the GAO conduct an investigation into the Bureau’s ability and effectiveness in conducting oversight (*i.e.*, supervisory examinations) and enforcing fair lending laws, including:

1. The overall effectiveness of the Bureau’s oversight and enforcement of fair lending laws from:
 - a. 2012 through November 2017; and
 - b. December 2017 to present;
2. A comparison of the number of staff with specialized expertise in fair lending laws between 2012 through November 2017 and December 2017 to present, as well as the impact of such staff levels and expertise on the effectiveness of the Bureau’s oversight and enforcement of fair lending laws during those periods.
3. Whether the decision to move the Office of Fair Lending from SEFL Division to under the Director’s control in the Office of Equal Opportunity and Fairness:
 - a. Has impacted the effectiveness or ability of the Bureau to oversee and enforce fair lending laws; and
 - b. Was based on indifference, neglect, improper political influence, or made over the objections of career Bureau staff;
4. Whether the decision to strip the Office of Fair Lending of its supervisory and enforcement duties:
 - a. Has impacted the effectiveness or ability of the Bureau to oversee and enforce fair lending laws; and
 - b. Was based on indifference, neglect, improper political influence, or made over the objections of career Bureau staff; and
5. Whether the additional HMDA data points added as a result of the Bureau’s 2015 HMDA rulemaking improved the Bureau’s ability to conduct oversight and enforce fair lending laws, and the effect on the Bureau’s ability to oversee and enforce fair lending laws if those data points are rescinded.

We also request that GAO provide specific recommendations for the Bureau to carry out its fair lending mandate to provide “oversight and enforcement of Federal laws intended to ensure the fair, equitable, and non-discriminatory access to credit for both individuals and communities that are enforced by the Bureau, including the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act.”¹²

Thank you in advance for your attention to this matter.

Sincerely,



Sherrod Brown
Ranking Member
Committee on Banking, Housing, and
Urban Affairs



Elizabeth Warren
Ranking Member
Subcommittee on Financial Institutions and
Consumer Protection

¹² Dodd-Frank Sec. 1013(c)(2)(A).

Appendix

2011 through November 2017: Bureau Fair Lending Actions under Director Cordray

Date	Defendant	Fair Lending Law	Consumer Relief/Damages	Civil Penalties
10/1/2012	American Express Centurion Bank*	ECOA	\$59,500,000	\$9,600,000
10/9/2013	Mortgage Master, Inc.	HMDA	-	\$425,000
10/9/2013	Washington Federal	HMDA	-	\$34,000
12/20/2013	Ally Financial Inc. and Ally Bank	ECOA	\$80,000,000	\$18,000,000
12/23/2013	National City Bank	ECOA	\$35,000,000	-
6/19/2014	Synchrony Bank, f/k/a GE Capital Retail Bank	ECOA,CFPA	\$225,000,000	-
5/28/2015	Provident Funding Associates, L.P.	ECOA	\$9,000,000	-
7/14/2015	American Honda Finance Corp.	ECOA	\$24,000,000	-
9/28/2015	Fifth Third Bank	ECOA	\$18,000,000	-
11/4/2015	Hudson City Savings Bank	ECOA	\$27,250,000	\$5,500,000
2/2/2016	Toyota Motor Credit	ECOA	\$21,900,000	-
6/29/2016	BankCorpSouth Bank	ECOA	\$7,580,000	\$3,000,000
3/5/2017	Nationstar Mortgage, LLC	HMDA	-	\$1,750,000
8/23/2017	Amer. Express Centurion Bank Amer. Express Bank, FSB	ECOA	\$96,000,000**	-
TOTAL			\$628,730,000	\$42,809,000

* Total restitution and civil penalty for ECOA as well as claims under CFPA, TILA, and FCRA.

** Includes \$95 million in redress returned to consumers during Bureau's review but not part of consent order.

December 2018 through Present: Bureau Fair Lending Actions Under Acting Director Mulvaney and Director Kraninger

Date	Defendant	Fair Lending Law	Restitution	Civil Penalties
6/5/19	Freedom Mortgage Corp.	HMDA	-	\$1,750,000
TOTAL				\$1,750,000