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Consumers Under Attack: The Consumer Financial Protection Bureau Under Director Kraninger

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Consumers Under Attack: The Consumer Financial Protection Bureau under Director Kraninger

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Committee on Banking, Housing, and Urban Affairs

Sherrod Brown, Ranking Member

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EXECUTIVE SUMMARY

Congress created the Consumer Financial Protection Bureau—or CFPB—to crack down on Wall Street banks, predatory payday lenders, and crooked corporations that rip people off. Wall Street has armies of lobbyists fighting for every tax break, every exemption, every opportunity to be let off the hook for scamming customers and preying on families. Most Americans don't have that kind of power. The Consumer Financial Protection Bureau is supposed to be their voice, fighting for them.

During its first six years, the CFPB worked. It delivered results for the consumers it was designed to protect—returning \$12 billion to 29 million Americans who had been harmed by shady debt collectors, predatory megabanks, and lawless payday lenders. It did its job for consumers despite relentless attacks on the agency by powerful corporations and their allies in Washington who tried to deny the CFPB a Director and sought to undermine the agency's structure.

The corporate crowd could not destroy the CFPB from the outside. But under President Trump, they are now attempting to dismantle the agency from within. Under the President's first appointed director, Mick Mulvaney, the CFPB shifted away from protecting servicemembers and rooting out discrimination to doing industry favors. Kathleen Kraninger, Mr. Mulvaney's replacement, has continued down the same path—corporate protection instead of consumer protection.

In her first year, Director Kraninger continued her predecessor's policies that undermined the CFPB's ability to serve consumers. Specifically, Director Kraninger:

- Joined corporate efforts to restructure the CFPB and undermine the agency's ability to carry out its duties;
- Eliminated programs to protect active-duty servicemembers from predatory lending practices;
- Undermined the CFPB's Student Loan Ombudsman, ceding the agency's authority to the notoriously anti-student Education Secretary, Betsy DeVos;
- Crippled the CFPB's Office of Fair Lending, resulting in the Bureau not bringing a single public enforcement action for discrimination or returning a single dollar to victims of discrimination in the past two years;
- Sided with payday lenders by denying consumers critical protections and undermining state law caps on interest rates—paving the way for unregulated predatory payday lending across the nation;

- Stopped consumers victimized by corporate wrongdoers from getting their money back;
- Gave debt collectors the green light to inundate consumers with calls, send consumers unlimited, harassing texts and emails, and invade consumers' privacy by tormenting their friends and family; and
- Assembled a team of corporate insiders—including an “expert” who previously defended Big Tobacco’s marketing to children—to make recommendations for “updating” federal consumer financial laws and regulations.

Under Director Kraninger, the CFPB has departed from its mission to stand up for hardworking families. Not only has Director Kraninger neglected her own duty to ensure that “federal consumer financial laws are enforced consistently,” she has undermined career public servants who have attempted to fulfill the agency’s purpose—protecting consumers from corporate abuse. She has repeatedly placed the agency on the side of large corporate interests, at the cost of hardworking families’ paychecks.

This report chronicles in detail Director Kraninger’s first year sabotaging the agency that she was entrusted to safeguard and harming the consumers the agency was created to defend.

SABOTAGING THE CFPB

“I am aware of the constitutionality questions, Senator. I think they are important, but they are not for me in this position to answer. The Director has a responsibility to carry out the law as it is written and run the agency as it is established now, and that is my focus.”

–Kathleen Kraninger, Testimony at Nomination Hearing, July 2018¹

During CFPB Director Kathleen Kraninger’s Senate Banking Committee nomination hearing, Ranking Member Sherrod Brown asked her directly whether if confirmed she would defend the Consumer Financial Protection Bureau (CFPB) from constitutional challenges. She testified that as Director it was not her position to decide whether the agency is constitutional.²

For the first ten months of her tenure, Director Kraninger stayed true to her testimony. At her direction, the CFPB continued to defend itself from constitutional challenges in the Second, Fifth, and Ninth Circuit Courts of Appeal.³ As recently as August 12, 2019, the CFPB vigorously defended its constitutionality.⁴

But just a few weeks later, Director Kraninger abandoned her support for the CFPB. In a stunning reversal—which not even Acting Director Mick Mulvaney undertook—Director Kraninger *joined* a constitutional attack on the CFPB by a debt relief firm that the CFPB was investigating for scamming consumers. On September 17, 2019, Director Kraninger directed CFPB attorneys to request that the Supreme Court overturn *CFPB v. Seila Law*, the Ninth Circuit decision upholding the CFPB’s constitutionality.⁵ Director Kraninger instructed CFPB attorneys to argue, for the first time, that for-cause removal of the Director under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act)⁶ is unconstitutional.⁷ The Supreme Court heard oral arguments on the *Seila Law* case on March 3, 2020.

The about-face turnaround aligns Director Kraninger with the Chamber of Commerce, right-wing think tanks, and agency-regulated companies, all of which have submitted briefs to the Supreme Court arguing that the CFPB is unconstitutional.⁸ Among these companies are RD Legal, which the CFPB sued for “allegedly scamming 9/11 heroes out of money intended to cover medical costs, lost income, and other critical needs,”⁹ and Advance Financial, a payday lender whose owner, Mike Hodges, was caught bragging

about his access to the Trump administration.¹⁰ It also directly contradicts the assurances she gave at her nomination hearing.

When Director Kraninger testified before the Senate Banking Committee on October 17, 2019, Ranking Member Brown questioned whether her testimony at her nomination hearing had misled the Committee about her position on the CFPB's constitutionality. As he stated: "I think it speaks to your credibility as a public official that came into . . . this committee and that you wouldn't speak on issues of constitutionality and then you did."¹¹

In a letter to Congress, Director Kraninger claimed that her decision to no longer defend the CFPB's constitutionality would not "affect [her] commitment to fulfilling the CFPB's statutory responsibilities" and that she would "continue to carry out the CFPB's duties under the CFPA and to defend the CFPB's actions."¹²

But her decision has impeded the CFPB's ability to carry out its duties. For example, the CFPB has refused to implement the payment provisions of the 2017 rule on Payday, Vehicle Title, and Certain High Cost-Installment Loans while the Supreme Court is considering the constitutional challenge.¹³ Director Kraninger's decision has resulted in stays of enforcement actions against predatory lenders, debt collectors, and other defendants in the Eastern District of New York and the Second, Fifth, and Ninth Circuit Courts of Appeal.¹⁴

Ultimately, consumers have paid—and will continue to pay—the price for Director Kraninger's many decisions to turn her back on them and the CFPB. Under Director Kraninger, the CFPB is not implementing rules that protect consumers from unfair, deceptive, or abusive acts and practices. Nor is the CFPB proceeding with investigations or lawsuits against debt relief companies, predatory payday lenders, abusive debt collectors, and other companies. For consumers scammed by these companies, justice delayed feels like justice denied. They deserve better.

ABANDONING SERVICEMEMBERS

“The Department [of Defense] believes that the full spectrum of tools, including supervisory examinations, contribute to effective industry education about, and compliance with, the MLA.”

–Department of Defense letter to Sen. Bill Nelson, September 2018

Director Kraninger flunked the first test of her leadership and independence. Instead of siding with our servicemembers, the Department of Defense, and every major military support organization, she endorsed the extreme position that the CFPB lacks authority to examine payday lenders, banks, and other lenders to ensure they are complying with the Military Lending Act (MLA).¹⁵

The CFPB’s decision “baffled” the Pentagon and was opposed by every major group representing servicemembers.¹⁶ The Department of Defense stated that it was not consulted about the decision, and that it “believes that the full spectrum of tools, ***including supervisory examinations***, contribute to effective industry education about, and compliance with, the MLA.”¹⁷ According to media reports, “experts say the CFPB’s stance runs counter to the broad bipartisan support for the MLA both during and after its passage.”¹⁸

Congress passed the MLA in 2007 to rein in payday lenders and other lenders that targeted American troops for abusive and predatory loans. The centerpiece of the law is a 36 percent cap on interest rates for consumer loans to active duty servicemembers and their dependents.

From 2012 through 2017, the CFPB examined lenders to ensure that they were complying by the 36 percent interest rate cap on loans to active-duty servicemembers and their dependents. Indeed, through such an examination, the CFPB pursued a payday lender had illegally overcharged servicemembers and their families.¹⁹ The Bureau brought a public enforcement action against that payday lender and was able to provide refunds to these servicemembers.²⁰

To ensure servicemembers receive the protections they have earned, on March 5, 2019, every Democratic Senator sent a letter to Director Kraninger imploring her to resume MLA examinations to ensure that servicemembers receive the protections they have earned.²¹ In their letter, the Senators laid out the existing statutory authority for the

CFPB to examine lenders for compliance with the MLA, including Section 1024(b)(1)(C) of the Dodd-Frank Act, which explicitly states that the CFPB “shall require reports and conduct examinations on a periodic basis . . . for purposes of . . . detecting and assessing risks to consumers and to markets for consumer financial products and services.”²² As the Senators pointed out, not one single payday lender, bank, or other lender has ever challenged that authority.

Despite the years of examinations and express statutory language, Director Kraninger refused to reconsider her decision to end CFPB oversight of the MLA. Director Kraninger should fulfill her duty and stand with servicemembers and their families to ensure they receive all of the MLA protections they have earned. She should not have to be persuaded to stand up for consumers, especially the servicemembers and their families who protect and defend our nation.

SELLING OUT STUDENTS TO SECRETARY DEVOS

EDUCATION

Education Department hinders policing of student loans, consumer agency says

By MICHAEL STRATFORD | 05/16/2019 12:51 PM EDT

BUSINESS

CFPB Chief Says Education Department Is Blocking Student Loan Oversight

May 16, 2019 - 5:00 AM ET
Heard on Morning Edition

Senators To CFPB: Why Are You Still Failing To Protect Student Loan Borrowers?

January 30, 2020 - 5:50 PM ET

In another failed test of her leadership and independence, Director Kraninger is allowing Secretary DeVos and the Department of Education (Department) to block the CFPB from conducting oversight of federal student loan servicers. This market affects more than 43 million borrowers with more than \$1.1 trillion in federal student loan debt.²³ It has now been more than two years since the CFPB examined any federal student loan servicer.

Until 2017, the CFPB utilized all of its statutory tools to oversee the market for student loans. Following a rulemaking in 2013,²⁴ the CFPB conducted supervisory examinations of the companies that service both federal and private student loans to ensure they were complying with federal consumer financial laws.²⁵ The CFPB also brought several enforcement actions against federal and private student loan servicers when investigations uncovered serious violations of law.²⁶ In addition, the CFPB's Student Loan Ombudsman issued reports detailing the performance of federal and private student loan servicers and summaries and analyses of borrowers' complaints against servicers.²⁷

Since 2017, however, Secretary DeVos has blocked the CFPB from examining federal student loan servicers. On August 31, 2017, the Department gave notice that it was terminating a Memorandum of Understanding (MOU) with the CFPB covering the sharing of information necessary for the CFPB to examine federal student loan servicers.²⁸ In December 2017, the Department issued guidance to federal student loan servicers prohibiting them from sharing information with the CFPB.²⁹ As a result, Director Kraninger has acknowledged that the Bureau has not had access to student loan information necessary to conduct full and complete examinations of federal student loan servicers since December 2017.³⁰

Unlike with the MLA, Director Kraninger agrees that the CFPB has authority to conduct examinations of both private and federal student loan servicers. During the October 2019 Senate Banking Committee oversight hearing, she testified that the Bureau has “a responsibility and ability to examine both entities engaged in *federal* student loans as well as *private* student loans.”³¹ Yet Director Kraninger has failed to stand up to Secretary DeVos, seek a court order,³² or take any other measure to ensure the CFPB has access to the student loan information necessary for the CFPB to resume examinations of federal student loan servicers in the more than 15 months since she became CFPB Director. She has effectively given Secretary DeVos veto power over whether the CFPB does its job and examine the student loan servicing market.

For the past year, Director Kraninger has provided shifting excuses and arguably misled Congress about the reasons for the CFPB’s failure to examine federal student loan servicers:

- During a March 2019 Senate Banking Committee oversight hearing, Director Kraninger testified that the CFPB was in the process of hiring a new student loan ombudsman who would be responsible for reestablishing the information sharing MOU with the Department that would allow the CFPB to resume examinations of federal student loan servicers;³³
- During a March 2019 House Committee on Financial Services oversight hearing, Director Kraninger also testified that she wanted to have the student loan ombudsman in place to reestablish the MOU with the Department so that the CFPB could resume examinations of federal student loan servicers;³⁴
- In an April 2019 letter, Director Kraninger reiterated that she wanted to have the student loan ombudsman in place to reestablish the MOU with the Department³⁵; and

- In September 2019, after he had been appointed as the student loan ombudsman, Robert Cameron also led the staff from the Senate Banking and Health, Education, Labor, and Pension Committees to believe that he was working to reestablish the information sharing MOU with the Department.³⁶

None of that was true. Mr. Cameron, the CFPB’s student loan ombudsman, was neither responsible for nor has he worked on reestablishing the information sharing MOU with the Department. Instead, Director Kraninger assigned that responsibility to the associate director of the Division of Supervision, Enforcement, and Fair Lending. The new associate director, however, was not even hired until September 2019, and did even not send the Department a first draft of the information sharing MOU until December 2019—a full year after Ms. Kraninger became CFPB Director.

Millions of student borrowers are paying the price for Director Kraninger’s inaction. Because of her failure to stand up to Secretary DeVos, the CFPB is not conducting oversight to prevent student loan servicers from unfairly steering borrowers into forbearance or deferment plans—which are more costly for borrowers but more profitable for servicers—instead of income based repayment plans. In the past two years, tens of thousands of teachers, nurses, servicemembers, and other public servants have been denied for loan forgiveness.³⁷ Yet—even after the release of scathing reports by the Government Accountability Office and the Department of Education’s Inspector General³⁸—the CFPB is not examining the student loan servicer responsible for administering the Public Service Loan Forgiveness Program. And despite the mountain of new research on racial disparities in student debt,³⁹ the CFPB is not examining whether student loan servicers are violating civil rights laws or engaged in other unlawful conduct that disproportionately harms borrowers of color.

Recently Director Kraninger indicated that she intends to cede the CFPB’s authority and responsibility for examining federal student loan servicers to Secretary DeVos and the Department. During a February 5, 2020 hearing before the House Financial Services Committee, Director Kraninger testified that the CFPB and Department were making progress towards reestablishing the MOU.⁴⁰ Director Kraninger also reported that she was considering detailing CFPB examiners to the Department to “work together on how we can jointly go in and conduct oversight.”⁴¹

These developments are disturbing. While the CFPB should be standing up for student borrowers, Director Kraninger’s plan would cede the CFPB’s authority to a separate agency that has no mandate, training, or expertise in enforcing consumer finance laws. And even worse—under Secretary DeVos, the Department has a demonstrated record of violating court orders and actively seeking to harm student borrowers.⁴²

After two years of obstruction by the Department, inaction by the CFPB, and widespread reports of mistakes and mismanagement by federal student loan servicers, it is time that Director Kraninger take responsibility, stand up to Secretary DeVos, and ensure that the CFPB immediately fulfill its statutory duty to protect student borrowers.

DISMANTLING CIVIL RIGHTS PROTECTIONS

“Hate-crime hoaxes are about three times as prevalent as actual hate crimes. (And I hate that I actually dignified their existence by quoting a statistic that recognizes them).”

“Fine....let's say they called him [n-word]....would that make them racists, or just assholes looking for the most convenient way to get under his skin?”

–Eric Blankenstein, Blog Posts at Two Guys Chatting⁴³

These stunning and reprehensible statements were made by Eric Blankenstein, a political appointee hired by Acting Director Mulvaney to lead the CFPB’s division of Supervision, Enforcement, and Fair Lending (SEFL).

When these statements were reported publicly, Acting Director Mulvaney’s response was just as stunning and reprehensible. Rather than condemn them, Mr. Mulvaney saw the occasion as cause for celebration. According to the CFPB Inspector General’s (IG) Report:

“Blankenstein described his encounter... as Mulvaney giving ‘him a high-five that morning in, sort of, celebration of the article that had come out the night before.’”⁴⁴

The IG Report also found that Mr. Blankenstein “may have abused his authority,” “may have misused his position for private gain,” and “created the appearance of a violation of the Standards of Ethical Conduct for Employees of the Executive Branch.”⁴⁵

In another failed test of her leadership, Director Kraninger retained Mr. Blankenstein and left him in charge of the CFPB’s Office of Fair Lending and Equal Opportunity (Office of Fair Lending) when she took over the CFPB in December 2018.

The Dodd-Frank Act directed the CFPB to create the Office of Fair Lending and charged it with “providing oversight and enforcement of Federal laws intended to ensure the fair,

equitable, and nondiscriminatory access to credit for both individuals and communities that are enforced by the CFPB, including the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act.”⁴⁶

In 2011, Director Cordray established the Office of Fair Lending as part of the CFPB’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 by⁴⁷:

- 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.⁴⁸

Since Director Cordray stepped down in November 2017, Acting Director Mulvaney, Director Kraninger, and Mr. Blankenstein have crippled the Office of Fair Lending. They 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 that carry out the CFPB’s enforcement and oversight work—to the Director’s Office, where it was subsumed into the Office of Equal Opportunity and Fairness, an office that handles internal discrimination complaints at the CFPB.

Their actions have achieved the intended result—the Office of Fair Lending’s enforcement of fair lending laws has ground to a halt. For more than two years—from December 2017 to present—the CFPB has not brought a single public enforcement action against a lender for discrimination. During this time, the CFPB has not returned a single dollar to a victim of discrimination, and referred only two cases involving a pattern or practice of alleged discrimination to the Department of Justice.⁴⁹

	# 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 CFPB Annual Fair Lending Reports.⁵⁰

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

** Includes only data through 2018 as available from the CFPB.

Director Kraninger also is currently in the process of weakening reporting requirements under the Home Mortgage Disclosure Act (HMDA). That law requires mortgage lenders to keep records of certain key pieces of information regarding their lending activity that they must submit to regulators. Regulators rely on this critical information to ensure that lenders are serving the housing needs of their communities, provide public officials with information to help them make decisions and policies, and determine whether lending patterns are discriminatory.⁵¹

In May 2019, the CFPB announced a proposed rulemaking that would eliminate certain data points, such as debt-to-income ratio and credit score, which the CFPB added in a 2015 rulemaking. These are some of the same critical data points that, in 2009, the Government Accountability Office recommended collecting in order to “facilitate” federal enforcement of fair lending laws.⁵² A final rule is expected in 2020.

On December 18, 2019, Ranking Member Brown and Senator Warren sent a letter to GAO requesting that it investigate the CFPB’s failure to conduct oversight and enforcement of fair lending laws.⁵³ On January 14, 2020, GAO agreed to open an investigation to the effectiveness of the CFPB’s oversight and enforcement of fair lending laws.

In a short time, Director Kraninger has overseen an intentional effort to all but end the CFPB’s oversight and enforcement of fair lending laws. Her actions are contrary to Congress’s intent that the CFPB establish an Office of Fair Lending with specific duties, including enforcement and oversight of fair lending laws. The Bureau’s meager oversight record under Director Kraninger’s reflects a neglect of her duty to protect consumers from unlawful discrimination.

Director Kraninger should carry out her statutory duties to enforce fair lending laws, immediately reestablish the Office of Fair Lending within the SEFL division, restore its supervisory and enforcement powers, and get back to the critical work of protecting consumers from discrimination.

PROTECTING PAYDAY LENDER PATRONS

The Washington Post

Democracy Dies in Darkness

Payday lenders discussed raising money for Trump's campaign to fend off regulation, audio reveals

To ensure Democrats don't block weaker industry rules, payday lenders said they needed access to Trump.

In October 2019, the Washington Post reported that payday lenders had gained exclusive access to the White House in their efforts to repeal regulations restricting predatory payday loans. In exchange for contributions to the Trump campaign, payday lenders bragged about being able to “pick up the phone and call someone that could get the president’s attention.”⁵⁴

Payday lenders target lower-income borrowers, offering high interest short-term loans that in many cases must be re-borrowed within 14 or 30 days. With Democrats controlling the House of Representatives, payday lenders have focused their sights on the Presidency by fundraising to re-elect President Trump. They know that his political appointees will continue rolling back consumer protections. Payday lenders know exactly how to curry favor with President Trump: in addition to donating over \$2.2 million to his campaign,⁵⁵ in recent years, they have propped up the financially-distressed Trump National Doral Golf Course⁵⁶ by holding their payday conferences there.⁵⁷

The payday lenders have gotten exactly what they paid for from the CFPB under the Trump Administration. In early 2018, during Acting Director Mulvaney’s tenure, the CFPB dropped lawsuits against four payday lenders.⁵⁸ Under Director Kraninger, the CFPB has not brought a single new lawsuit against a payday lender.⁵⁹

Director Kraninger is also rolling back commonsense regulations of the payday industry. After five years of research and more than one million public comments, on October 5, 2017, the CFPB enacted the Payday, Vehicle Title and Certain High-Cost Installment Loans rule (Payday Rule).⁶⁰ The Payday Rule generally prohibits two types of unfair and abusive practices. First, the Payday Rule makes it an unfair and abusive practice for a lender to make certain loans without determining that the consumer has the ability to repay the loans.⁶¹ Second, the Payday Rule prohibits lenders from attempting to withdraw payments from consumers' accounts for certain loans after two prior attempts to withdraw funds failed due to a lack of funds.⁶²

Shortly after Acting Director Mulvaney took over, CFPB political appointees met with an industry trade group for payday lenders to discuss a lawsuit or potential repeal of the Payday Rule.⁶³ A few days later, payday lenders filed a lawsuit against the CFPB challenging the ability-to-pay requirement of the Payday Rule.⁶⁴

Director Kraninger has continued Acting Director Mulvaney's and the payday industry's efforts to gut the Payday Rule. On February 6, 2019, just a few months after she became Director, the CFPB issued a proposed rule to repeal the mandatory underwriting provisions of the Payday Rule.⁶⁵ On June 6, 2019, the CFPB issued a final rule delaying the compliance date for the ability-to-repay protections by 15 months, from August 19, 2019 to November 19, 2019, by which time the provisions likely will be repealed.⁶⁶

Director Kraninger also has refused to implement the payment protections of the Payday Rule, which are not the subject of a legal challenge or repeal rulemaking.⁶⁷ As part of the payday industry's lawsuit challenging the ability-to-repay protections, the court initially stayed the implementation of the payment protections, but there is no reason to continue that stay. In a March 8, 2019 brief to the court, CFPB attorneys argued that there was no legal basis to stay the compliance date for the payment provisions:

[T]he possibility that the Bureau may revise the payments provisions does not justify continuing to stay the compliance date of those provisions And, in any event, even definitive plans to undertake a rulemaking process do not by themselves justify staying the *compliance date* of a rule (as opposed to litigation over a rule). Rather, a stay of a compliance date is warranted only if the plaintiff can show various factors, including a likelihood of success on the merits, or at least a "substantial case on the merits" Plaintiffs have not attempted to make that showing in asking the Court to keep the compliance date for the payments provisions stayed until the Bureau completes its rulemakings that address the separate underwriting provisions.⁶⁸

The Bureau, however, then decided that it would not seek to lift the stay.⁶⁹ In other words, the Bureau told the court that there is no legal basis to stay the compliance date for the payment provisions, but then allowed the stay to remain in place, withholding critical consumer protections.

Director Kraninger's efforts to protect payday lenders extends to her role as a member of the board of the FDIC. As an FDIC board member, Director Kraninger voted in November 2019 for a proposed rule that would eviscerate state laws caps on the interest rates on loans and allow unregulated predatory payday lending across the nation.⁷⁰

Instead of protecting payday lenders, Director Kraninger should protect consumers from the payday loans that the CFPB has documented trap consumers into cycles of debt. Specifically, she should reinstate the original 2017 Payday Rule with its commonsense requirement that lenders only make loans that consumers can afford to repay. She also should end the embargo on new enforcement actions against payday lenders and take strong and decisive action against payday lenders that violate the law to prey on hardworking families.

CUTTING OFF COMPENSATION TO SCAMMED CONSUMERS

“Under Director Kathleen Kraninger, the Bureau appears to be ignoring existing legal authority for calculating restitution in order to reduce the amount of restitution returned to harmed consumers or undercount the consumers who should receive restitution”⁷¹

On January 13, 2020, fifteen U.S. Senators wrote a scathing letter to Mark Bialek, the CFPB Inspector General, calling for an investigation into several CFPB settlements during Director Kraninger’s tenure that provided limited or no restitution for harmed consumers. Providing restitution to victimized consumers is critical to the function of the CFPB—by not only returning money back to victimized consumers, but also ensuring that companies do not get to keep the money they made by cheating consumers.

Under Director Cordray, the CFPB returned more than \$12 billion to consumers victimized by predatory payday lenders, shady debt collectors, and other companies that profit by violating the law.⁷² During Director Kraninger’s tenure, the CFPB has hardly added to that total. Under her leadership, the CFPB now goes out of its way to reduce—if not eliminate altogether—the money returned to harmed consumers. As a result, companies have an incentive to violate the law because they know the Kraninger-led CFPB will allow them to retain all or nearly all of the funds they illegally obtain from consumers.

A 2019 CFPB consent order entered into with debt collector Asset Recovery Associates, Inc. (ARA) highlights Director Kraninger’s efforts to limit restitution to harmed consumers. The CFPB’s investigation found that for at least four years, ARA had used illegal debt collection tactics—such as falsely threatening to sue or arrest consumers and misrepresenting to consumers that collection employees were attorneys—to induce consumers to make payments.⁷³ Yet the CFPB only required ARA to pay back \$36,800 and only to those consumers who complained.⁷⁴

As a result, the vast majority of consumers whom ARA subjected to illegal threats and misrepresentations will receive no restitution. It also means that ARA gets to retain all

but \$36,800 of the amount it illegally collected from consumers over a more than four-year period.

The CFPB's settlement with ARA is no outlier. It reflects an intentional effort by Director Kraninger to restrict restitution to consumers. Indeed, in three other cases since she became Director, the CFPB provided zero restitution for consumers:

- On January 19, 2019, the CFPB announced a consent order with Sterling Jewelers Inc. for violating the Truth in Lending Act, Regulation Z, and the CFPA by opening store credit-card accounts without consumers' consent, enrolling consumers in payment protection plans without their consent, and deceiving consumers about the financing terms associated with the credit-card accounts.⁷⁵ The CFPB required Sterling Jewelers to pay a \$10 million fine, but did not require the company to provide refunds of money consumers paid for the payment protection plans or any other monetary relief to consumers.
- On January 25, 2019, the CFPB announced a consent order with Enova International Inc., an online payday lender, for engaging in unfair acts or practices in violation of the CFPA for withdrawing funds from consumers' accounts without their authorization.⁷⁶ The CFPB imposed a \$3.2 million civil penalty, but did not require Enova to pay back the funds they had unlawfully withdrawn from consumers' bank accounts.
- On February 1, 2019, the CFPB announced a stipulated final judgment with NDG Financial Corporation and other defendants for running a payday lending enterprise that engaged in unfair, deceptive, and abusive acts practices in violation of the CFPA and the Credit Practices Rule.⁷⁷ The CFPB's Amended Complaint, filed under Director Cordray, sought "damages and other monetary relief . . . to redress injury to consumers."⁷⁸ The settlement, however, dropped the requests for restitution and other relief for victimized consumers.

The House Financial Services Committee conducted an investigation and on October 16, 2019, issued a report (House Report) containing its findings on these three cases.⁷⁹ The House Report included internal memoranda from career staff in the CFPB's Office of Enforcement and Legal Division that recommended and provided legal support for providing for restitution to consumers.⁸⁰ The House Report also revealed that Director Kraninger overruled the CFPB's career staff and refused to require any of these three entities to provide redress to the consumers they had harmed—even though at least one of the entities *volunteered* to repay \$1.3 million to victimized consumers.⁸¹

In each of these cases, the CFPB departed from the well-established legal standard for restitution. The Ninth Circuit set forth the standard for restitution in CFPB cases in *CFPB v. Gordon*.⁸² As that court explained, restitution is “a form ancillary relief” that a court can order “[i]n the absence of a proof of actual damages’.”⁸³ Restitution is measured by “the full amount lost by consumers” or the amount that “reasonably approximates the defendants’ unjust gains.”⁸⁴

In debt collection cases by the CFPB and the FTC, courts have ordered defendants like ARA to refund to consumers the *entire* amount they collected through the unlawful collection scheme.⁸⁵ For example, in a prior CFPB debt collection case, the district court determined that the correct amount of restitution was the \$5,261,484 that represented the total amount defendants had collected from consumers through their unlawful debt-collection scheme.⁸⁶

In all four cases, the CFPB made a conscious decision to disregard legal precedent in order to allow companies that violated the law to keep all, or nearly all, of the money they illegally collected from consumers. This new approach to providing restitution to consumers is fundamentally at odds with the CFPB’s mission: it fails to provide relief to victimized consumers, it allows bad actors to retain the profits from their illegal conduct, and it is unfair to those companies who follow the law. It is time for Director Kraninger to stop shielding companies that cheat hardworking families and start enforcing consumer finance laws and regulations so that consumers receive the money that was taken from them.

DEFENDING DEBT COLLECTORS

Consumer complaints about abusive and harassing debt collection tactics consistently rank as a top issue to the CFPB’s Consumer Complaint Database. In 2018, the CFPB and Federal Trade Commission (FTC) received more than 530,000 complaints about debt collection.⁸⁷ But, instead of taking steps to rein in rogue debt collectors, Director Kraninger has proposed rules that would give a free pass to some of the most abusive collection practices.

TABLE 1: TYPES OF DEBT COLLECTION COMPLAINTS REPORTED BY CONSUMERS ⁴⁷

Types of debt collection complaints	%
Attempts to collect debt not owed	40%
Written notification about debt	20%
Communication tactics	13%
Took or threatened to take negative or legal action	13%
False statements or representations	10%
Threatened to contact someone or share information improperly	3%
Total debt collection complaints	100%

Source: CFPB Fair Debt Collection Practices Act Annual Report 2019

On May 7, 2019, the CFPB issued a proposed rule to implement the Fair Debt Collection Practices Act (FDCPA).⁸⁸ The proposed rule does more to provide safe harbors for debt collectors than protect consumers. Among other things, the proposed rule gives debt collectors a green light to:

- ***Inundate consumers with calls:*** The proposed rule allows collectors to call consumers up to seven times each week for *each* debt; as the proposed rule acknowledges, consumers often have multiple debts,⁸⁹ and therefore could receive two to three dozen calls from debt collectors each week.
- ***Send unlimited, harassing texts and email to consumers:*** Even though the proposed rule acknowledges that communications through e-mails, text messages,

or direct messages on social media can “harass consumers in some of the same ways as repeated or excessive telephone calls,”⁹⁰ it places no limit on the number of such electronic written communications that collectors can send to consumers.

- ***Invade consumers’ privacy by contacting their friends and family:*** The FDCPA categorically prohibits debt collectors from communicating with third parties, such as consumers’ friends or family, regarding consumers’ debts.⁹¹ The proposed rule attempts to circumvent this prohibition by excluding certain “limited-content messages” from the definition of a “communication” covered by the FDCPA. Under the proposed rule, collectors can leave these “limited-content messages” with a third party who answers the phone or shares the consumer’s voicemail.
- ***Creates a loophole for collection attorneys:*** The proposed rule would create a safe harbor that shields debt collection attorneys from liability but does not ensure “meaningful attorney involvement” in debt collection litigation.

In June 2019, Senator Menendez and Ranking Member Brown led a letter to the Director Kraninger urging her to revise the proposed rule to protect consumers from abusive debt collection tactics.⁹²

Instead of reversing course, on March 3, 2020, Director Kraninger announced a supplemental notice of proposed rulemaking that would allow debt collectors to revive so-called “zombie debt”—debts that a debt collector can no longer pursue in court because they are past the statute of limitations.⁹³ Rather than simply banning collection of time-barred debt, the proposed rule provides loopholes that allows collectors to mislead borrowers into unknowingly accepting liability for those debts.

Instead of providing a roadmap for collectors to harass consumers or trick them into reviving zombie debts, Director Kraninger should revamp the current debt collection rulemaking so that it protects consumers struggling to make ends meet from being bombarded by harassing phone calls, text messages, or emails.

A TASKFORCE OF DEREGULATORY IDEOLOGUES

Director Kraninger recently formed the Taskforce on Federal Consumer Law (Taskforce), which is supposed to conduct research and provide recommendations on how to modernize and update federal consumer financial laws and regulations. Several consumer finance experts with exceptional academic credentials and groundbreaking scholarship applied to serve on the Taskforce. Instead, Kraninger filled the Taskforce with representatives of payday lenders, Wall Street banks, and other corporate insiders.

Director Kraninger selected professional CFPB-critic Todd Zywicki to Chair the Taskforce. Mr. Zywicki has an extensive record working for corporations and against consumer interests: he has served as the director of a consulting business hired by Wall Street banks to influence the CFPB;⁹⁴ he was paid \$500 an hour to provide an “expert” report to help a debt relief company that scammed consumers out of more than \$130 million defend itself against a CFPB lawsuit;⁹⁵ he has called the CFPB a “tragic failure”;⁹⁶ and he has claimed that the CFPB’s consumer protection efforts “view consumers as too dumb, irrational or vulnerable to make their own decisions” about taking out a payday loan or bargaining over auto loans.⁹⁷

The remaining Taskforce members have also profited by selling out the interests of consumers in favor of payday lenders and other companies that have been the subject of CFPB investigations and lawsuits:

- 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.*”⁹⁸ Like Mr. Zywicki, Mr. Beales also works for a consulting firm where he sells his “expertise” to industry.⁹⁹ He recently provided an “expert” opinion on behalf of a payday lender that the CFPB sued, arguing that payday loans with interest rates of up to 448 percent¹⁰⁰ were “beneficial to consumers.”¹⁰¹
- Thomas Durkin penned an op-ed with Mr. Zywicki, which argued in favor of payday loans, or as he called them, “legal, high-cost” credit options.¹⁰²
- Jean Noonan traded in her work at the FTC to work as a corporate attorney at a law firm representing payday lenders that the CFPB has investigated or sued for ripping off consumers.¹⁰³

- William MacLeod also traded in his FTC experience to work at a corporate law firm defending corporations from government investigations and has “resolutely fought against onerous regulations.”¹⁰⁴

In fact, the Bureau even found that two of the Taskforce members are so intertwined with the industries they represent that it constitutes a “personal financial interest” under federal ethics law, 18 U.S.C. § 208(b)(1).¹⁰⁵ In order to ensure she had the Taskforce members she wanted, Director Kraninger waived the ethics requirements for these two individuals.¹⁰⁶

Based on the significant concerns about the Taskforce’s formation, composition, and its members’ conflicts of interest, Director Kraninger should disband the Taskforce. As currently constituted, any Taskforce conclusions or recommendations do not reflect objective, rigorous research; they reflect only the deregulatory dogma of Director Kraninger and the Taskforce members.

CONCLUSION

As this Report has demonstrated, Director Kraninger has failed to carry out her statutory duties to protect consumers. Each time she has had the opportunity to protect consumers, she has instead chosen to protect Wall Street banks, payday lenders, and other corporations that prey for profit. She sided with the company that allegedly scammed 9/11 survivors and other corporate interests to attack the CFPB's constitutionality in the Supreme Court. She sided with President Trump, Mick Mulvaney, and their corporate benefactors to repeal commonsense rules that would have protected consumers from predatory payday lenders and avoid debt traps. She has dutifully carried out Trump administration-wide effort to gut antidiscrimination protections for consumers. And she has given another Trump appointee, Secretary DeVos, an effective veto over the CFPB's statutory responsibility to protect student borrowers.

Director Kraninger should return the CFPB to its core mission: put consumers first. Anything less is a neglect of duty.

ENDNOTES

¹ See Tr. of Jul. 19, 2018 Hearing on Nominations of Kathleen Laura Kraninger and Kimberly A. Reed before the U.S. Senate Committee on Banking, Housing, and Urban Affairs, available at <https://www.govinfo.gov/content/pkg/CHRG-115shrg32318/pdf/CHRG-115shrg32318.pdf>.

² *Id.*

³ See *CFPB v. RD Legal*, No. 18-27423 (2nd Cir.); *CFPB v. All American Check Cashing*, No. 18-60302 (5th Cir.); *CFPB v. Seila Law*, 923 F.3d 680 (9th Cir.).

⁴ *CFPB v. RD Legal Funding, LLC*, No. 18-2743 (2nd Cir.), available at https://www.consumerfinancemonitor.com/wp-content/uploads/sites/14/2019/08/Response_and_reply_brief_of_the_CFPB_doc_106.pdf.

⁵ 923 F.3d 680 (9th Cir. 2019).

⁶ 12 U.S.C. § 5491(c)(3).

⁷ See Sept. 17, 2019, Letter to Speaker Nancy Pelosi available at <https://www.consumerfinancemonitor.com/wp-content/uploads/sites/14/2019/09/Pelosi-letter.pdf>.

⁸ See

<https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/19-7.html> (listing amici); see also <https://www.salon.com/2020/01/28/exclusive-report-the-financial-motive-behind-scotus-case-aimed-at-killing-consumer-bureau/>.

⁹ See *CFPB and New York Attorney General Sue RD Legal for Scamming 9/11 Heroes* <https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-new-york-attorney-general-sue-rd-legal-scamming-911-heroes-out-millions-dollars-compensation-funds/>.

¹⁰ See Renae Merle, *Payday Lenders discussing raising money for Trump's campaign to fend off regulation, audio reveals*, Wa. Po., available at <https://www.washingtonpost.com/business/2019/10/29/payday-lenders-discussed-raising-money-trumps-campaign-fend-off-regulation-audio-reveals/>.

¹¹ See Oct. 17, 2019, Hearing on the CFPB Semi-Annual Report, available at <https://plus.cq.com/doc/congressionaltranscripts-5747144?1>.

¹² See https://files.consumerfinance.gov/f/documents/cfpb_petition-to-modify_candy-kern-fuller-and-howard-e-sutter_decision-and-order.pdf.

¹³ See Aug. 14, 2019 letter from Ranking Member Brown to Director Kraninger, available at <https://www.banking.senate.gov/newsroom/minority/brown-demands-kraninger-protect-consumers-and-implement-payment-provision-of-payday-rule>.

¹⁴ See *CFPB v. All American Check Cashing, Inc.*, No. 3:16-cv-356 (S.D. Miss.), stayed pending appeal on constitutional issue, No. 18-60302 (5th Cir.), pet'n for cert. filed, No. 19-431 (S. Ct.); *CFPB v. CashCall, Inc.*, Nos. 18-55407, 18-55479 (9th Cir.); *Community Financial Services Association v. CFPB*, No. 1:18-cv-00295 (W.D. Tex.); *BCPF v. Forster & Garbus, LLP*, No. 2:19-cv-2928 (E.D.N.Y.); *CFPB v. RD Legal Funding*, No. 18-2743 (2d Cir.).

¹⁵ See CFPB Asks Congress for Clear Authority to Supervise for Compliance with the MLA. <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-asks-congress-clear-authority-supervise-compliance-military-lending-act/>.

¹⁶ See Kate Berry, *Pentagon, other baffled by CFPB plan to cease military lending exams*, <https://www.americanbanker.com/news/pentagon-others-baffled-by-cfpb-plan-to-cess-military-lending-exams>; see also <https://thehill.com/opinion/finance/406093-protect-the-military-lending-act>.

¹⁷ See <https://www.americanbanker.com/news/pentagon-others-baffled-by-cfpb-plan-to-cess-military-lending-exams>

¹⁸ *Id.*

¹⁹ See CFPB Takes Action Against Payday Lender, Nov. 20, 2013, available at <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-takes-action-against-payday-lender-for-robo-signing/>.

²⁰ *Id.*

²¹ See March 5, 2019. Letter to CFPB Director Kraninger, available at <https://www.reed.senate.gov/imo/media/doc/2019-03-05%20Ltr%20to%20CFPB%20re%20MLA.pdf> (includes two independent Senators who caucus with Democrats).

²² *Id.*

²³ See Student Loan System Presents Repayment Challenges, Pew Trusts, Nov. 6, 2019, available at <https://www.pewtrusts.org/en/research-and-analysis/reports/2019/11/student-loan-system-presents-repayment-challenges>.

²⁴ See Defining Larger Participants of the Student Loan Market, 78 Fed. Reg. 73383 (Dec. 6, 2013), available at <https://www.federalregister.gov/documents/2013/12/06/2013-29145/defining-larger-participants-of-the-student-loan-servicing-market>.

²⁵ See Sep. 14, 2017 letter from Dir. Cordray to Sec. DeVos, available at <https://www.consumerfinancemonitor.com/wp-content/uploads/sites/14/2017/09/Cordray-DeVos-Letter.pdf>;

²⁶ See, e.g., *In re Citibank*, No. 2017-CFPB-0021 (filed Nov. 21, 2017), available at https://files.consumerfinance.gov/f/documents/cfpb_citibank-n.a._consent-order_112017.pdf; *CFPB v. Navient Corp.*, Case No. 3:17-cv-00101 (M.D. Pa. Jan. 18, 2017), available at https://files.consumerfinance.gov/f/documents/201701_cfpb_Navient-Pioneer-Credit-Recovery-complaint.pdf.

²⁷ See, e.g., https://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf;
https://files.consumerfinance.gov/f/documents/102016_cfpb_Transmittal_DFA_1035_Student_Loan_Ombudsman_Report.pdf.

²⁸ See Aug. 31, 2017 letter from K. Smith, Acting Assistant Secretary, and Dr. A. W. Johnson, Federal Student Aid COO, to R. Cordray, CFPB Director, available at https://consumerist.com/consumermediallc.files.wordpress.com/2017/09/2017-09-01_signed_letter_to_cfpb.pdf.

²⁹ See Dec. 27, 2017 memorandum by Patrick A. Bradfield, Director of Federal Student Aid Acquisitions, available at

<https://static.politico.com/51/1f/0f805fd04c2eb035bcd79f9200be/december-27-2017-servicer-memo.pdf>.

³⁰ See Apr. 23, 2019 letter from K. Kraninger to Sen. Brown, on file with the Senate Committee on Banking, Housing, and Urban Affairs (Since December 2017 “student loan servicers have declined to produced information requested by the Bureau for supervisory examinations . . . of loans held by the Department based on the Department’s guidance.”).

³¹ See Oct. 17, 2019 K. Kraninger Testimony before the Committee on Banking, Housing, and Urban Affairs, *available at* <https://www.banking.senate.gov/hearings/10/01/2019/the-consumer-financial-protection-bureaus-semi-annual-report-to-congress>.

³² For example, in its lawsuit against Navient Corp., a student loan servicer that handles loans owned by the federal government, the CFPB obtained a court order compelling the Department to provide access to federal student loan records. See *Navient*, Case No. 3:17-cv-00101, Order dated Aug. 1, 2018, *available at* <https://www.courtlistener.com/recap/gov.uscourts.pamd.110329/gov.uscourts.pamd.110329.104.0.pdf>

³³ See U.S. Senate Committee on Banking, Housing, and Urban Affairs Hearing, (Mar. 12, 2019), Tr. at 18-20, *available at*, <https://www.govinfo.gov/content/pkg/CHRG-116shrg36014/pdf/CHRG-116shrg36014.pdf>.

³⁴ See Semi-Annual Review of the Consumer Financial Protection Bureau, U.S. House Committee on Financial Services (Mar. 7, 2019), Tr. at 75-76, *available at* <https://www.govinfo.gov/content/pkg/CHRG-116hrg36461/pdf/CHRG-116hrg36461.pdf>.

³⁵ See *supra* n. 30.

³⁶ See Oct. 9, 2010 Letter from Sen. Brown and Sen. Murray to R. Cameron, *available at* <https://www.banking.senate.gov/download/brown-murray-cfpb-ombudsman>.

³⁷ See, Chris Arnold, *Exclusive: Turf War Blocked CFPB From Helping Fix Student Loan Forgiveness Program*, NPR, Oct. 15, 2019, <https://www.npr.org/2019/10/15/769326896/exclusive-turf-war-blocked-cfpb-from-helping-fix-student-loan-forgiveness-progra>

³⁸ See U.S. Gov’t Accountability Office, GAO 19-595, Public Service Loan Forgiveness, Improving the Temporary Expanded Process Could Help Reduce Borrower Confusion, Sep 2019, at 6, *available at* <https://www.gao.gov/assets/710/701157.pdf>; U.S. Dep’t of Education, Office of Inspector General, ED-OIG/A05Q0008, Federal Student Aid: Additional Actions Needed to Mitigate the Risk of Servicer Noncompliance with Requirements for Servicing Federally Held Student Loans, Feb. 12, 2019, *available at* <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2019/a05q0008.pdf>.

³⁹ See, e.g., <https://libertystreeteconomics.newyorkfed.org/2019/11/just-released-racial-disparities-in-student-loan-outcomes.html>; <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-quicksand-student-debt-crisis-jul2019.pdf>.

⁴⁰ See Feb. 6, 2020 U.S. House Committee on Financial Services Hearing: Protecting Consumers or Allowing Consumer Abuse? A Semi-Annual Review of the Consumer

Financial Protection Bureau, *available at* <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=406111>.

⁴¹ *Id.*

⁴² *See, e.g.*, <https://www.npr.org/2019/10/25/773334681/devos-held-in-contempt-of-court-ed-department-fined-100-000-in-student-loan-case>.

⁴³ *See* <http://twoguyschatting.blogspot.com/2004/09/hate-crimes-vs-crimes.html>; *see also* https://www.washingtonpost.com/investigations/trump-anti-discrimination-official-once-called-most-hate-crimes-hoaxes/2018/09/26/05438bbe-c0fe-11e8-92f2-ac26fda68341_story.html?utm_term=.37b7b4104163.

⁴⁴ Report of the Inspector General of the Board of Governors of the Federal Reserve System and the Consumer Financial Protection Bureau, May 7, 2019, *available at* <https://www.banking.senate.gov/newsroom/minority/brown-warren-demand-action-following-damning-blankenstein-ig-report>.

⁴⁵ *Id.*

⁴⁶ Dodd-Frank Act § 1013(c)(2)(A).

⁴⁷ *Id.* § 1013(c)(2)(A) – (D).

⁴⁸ *See generally* Fair Lending Reports of the Consumer Financial Protection Bureau (2012 – 2018), *available at* <https://www.consumerfinance.gov/data-research/research-reports/?topics=fair-lending>.

⁴⁹ *See* Fall 2018 Semi-Annual Report of the Consumer Financial Protection Bureau, *available at* https://files.consumerfinance.gov/f/documents/cfpb_semi-annual-report-to-congress_fall-2018.pdf; Fair Lending Report of the Consumer Financial Protection Bureau, June 2019 (corrected Sept. 2019) at 30, *available at* https://files.consumerfinance.gov/f/documents/201909_cfpb_corrected-2018-fair-lending_report.pdf.

⁵⁰ *See* Fair Lending Reports of the Consumer Financial Protection Bureau (2012 – 2019), *available at* <https://www.consumerfinance.gov/data-research/research-reports/?topics=fair-lending>.

⁵¹ *See* Home Mortgage Disclosure Act Data, <https://www.consumerfinance.gov/data-research/hmda/>.

⁵² GAO-09-704, Fair Lending, Data Limitations and the Fragmented U.S. Financial Regulatory Structure Challenge Federal Oversight and Enforcement Efforts at 65 (July 2009), *available at* <https://www.gao.gov/new.items/d09704.pdf>.

⁵³ Brown. Warren Call on GAO To Investigate CFPB’s Failure to Enforce Fair Lending Rule, Dec. 18, 2019, <https://www.banking.senate.gov/newsroom/minority/brown-warren-call-on-gao-to-investigate-cfpbs-failure-to-enforce-fair-lending-rule>.

⁵⁴ Renae Merle, *Payday Lenders discussing raising money for Trump’s campaign to fend off regulation, audio reveals*, Wa. Po., <https://www.washingtonpost.com/business/2019/10/29/payday-lenders-discussed-raising-money-trumps-campaign-fend-off-regulation-audio-reveals/>.

⁵⁵ Timeline: Payday Industry Money Buys Trump Administration Influence, Nov. 20, 2019, <https://alliedprogress.org/research/timeline-payday-industry-money-buys-trump-administration-influence/>.

⁵⁶ *See* David Fahrenthold, *Trump’s Prized Doral Resort is in Steep Decline*, May 15, 2019, *available at* <https://www.washingtonpost.com/politics/trumps-prized-doral-resort->

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<https://www.thedailybeast.com/trump-doral-resorts-income-drops-69-in-two-years>.

⁵⁷ See Anjali Tsui, *How Payday Lenders Spent \$1 Million at a Trump Resort*, Jun. 5, 2019, <https://www.propublica.org/article/trump-inc-podcast-payday-lenders-spent-1-million-at-a-trump-resort-and-cashed-in>

⁵⁸ See Donna Borak, *Consumer Protection Bureau Drops Payday Lender Lawsuit*, Jan. 18, 2019, <https://money.cnn.com/2018/01/18/news/economy/cfpb-lawsuit-payday-lenders/index.html>.

⁵⁹ In 2020, the CFPB did settle a lawsuit filed during Director Cordray's tenure against a payday lender that went bankrupt, ThinkFinance. See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-settles-lawsuit-against-think-finance-entities/>.

⁶⁰ See <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/payday-vehicle-title-and-certain-high-cost-installment-loans/>.

⁶¹ 12 C.F.R. § 1041.4.

⁶² 12 C.F.R. 1041.7.

⁶³ See Nicholas Confessore, *Mick Mulvaney's Master Class in Destroying a Bureaucracy from Within*, Apr. 16, 2019, <https://www.nytimes.com/2019/04/16/magazine/consumer-financial-protection-bureau-trump.html>.

⁶⁴ See *Cnty. Fin. Svcs. Ass'n v. CFPB*, Case No. 1:18-cv-295 (W.D. Tex. Apr. 9, 2018).

⁶⁵ See Payday, Vehicle Title, and Certain High-Cost Installment Loans, <https://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/payday-vehicle-title-and-certain-high-cost-installment-loans/>.

⁶⁶ See Payday, Vehicle Title, and Certain High-Cost Installment Loans; Delay of Compliance Date; Correcting Amendments *available at* <https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/payday-vehicle-title-and-certain-high-cost-installment-loans-delay-compliance-date-correcting-amendments/>.

⁶⁷ See Aug. 14, 2019 Letter from Sen. Brown to K. Kraninger, *available at* <https://www.banking.senate.gov/newsroom/minority/brown-demands-kraninger-protect-consumers-and-implement-payment-provision-of-payday-rule>.

⁶⁸ See *Cnty. Fin. Svcs. Ass'n v. CFPB*, Case No. 1:18-cv-295 (W.D. Tex. Apr. 9, 2018), Jun. 10, 2019 Joint Status Report (Doc. 62); Aug. 2, 2019 Joint Status Report (Doc. 63).

⁶⁹ The court captured the absurdity in its order. According to the CFPB, the plaintiff payday lenders “would only be entitled to a stay if Plaintiffs can show various factors, including a likelihood of success on the merits, or at least a ‘substantial case on the merits.’” *CFSA v. CFPB*, Mar. 19 2019 Order at 2-3 (Doc. 58). But, the court noted, “no party is seeking to lift the compliance-date stay for the payment provisions.” *Id.*

⁷⁰ See <https://www.occ.gov/news-issuances/news-releases/2019/nr-occ-2019-132.html>;
<https://www.fdic.gov/news/news/press/2019/pr19107.html>.

⁷¹ See Jan. 13, 2020 Letter from Sens. Cortez Masto, Brown, and others to K. Kraninger, *available at* <https://www.cortezmasto.senate.gov/news/press-releases/cortez-masto-brown-colleagues-urge-inspector-general-to-investigate-cfpb-director-kraningers-failure-to-provide-relief-for-defrauded-consumers>.

⁷² See CFPB Finalizes Rule to Stop Payday Debt Traps available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-stop-payday-debt-traps/>.

⁷³ *CFPB v. Asset Recovery Associates, Inc.*, No. 2019-BCFP-0009 (Aug. 28, 2019) (“ARA Consent Order”), available at https://files.consumerfinance.gov/f/documents/cfpb_asset-recovery-associates_consent-order_2019-08.pdf.

⁷⁴ *Id.*

⁷⁵ *CFPB v. Sterling Jewelers Inc.*, Case No. 1:19-cv-00448 (S.D.N.Y. Jan. 16, 2019), available at https://files.consumerfinance.gov/f/documents/bcfp_sterling-jewelers_complaint.pdf.

⁷⁶ *In the Matter of Enova International, Inc.*, File No. 2019-BCFP-0003 (Jan. 25, 2019), available at https://files.consumerfinance.gov/f/documents/cfpb_enova-international_consent-order_2019-01.pdf.

⁷⁷ *CFPB v. NDG Financial Corp.*, Case No. 1:15-cv-05211 (S.D.N.Y. Feb. 4, 2019), available at https://files.consumerfinance.gov/f/documents/cfpb_ndg-financial-corp_consent-order.pdf.

⁷⁸ *CFPB v. NDG Financial Corp.*, Case No. 1:15-cv-05211 (S.D.N.Y. Dec. 11, 2015), Amended Complaint ¶¶ 336-37 (DE 47), available at https://files.consumerfinance.gov/f/documents/cfpb_northway_amended-complaint_122015.pdf.

⁷⁹ See “Settling For Nothing: How Kraninger’s CFPB Leaves Consumers High and Dry,” Report Prepared by Majority Staff of the Committee on Financial Services, Oct. 2019, at 14, available at https://financialservices.house.gov/uploadedfiles/cfpb_report_settling_for_nothing.pdf

⁸⁰ *Id.* at 9-11.

⁸¹ *Id.* at 11, 13-14.

⁸² 819 F.3d 1179 (9th Cir. 2011). Although the CFPB has only been in existence since 2011, courts have applied long-standing standard for restitution applied to the Federal Trade Commission (FTC) in CFPB actions.

⁸³ 819 F.3d 1179, 1195 (quoting *FTC v. Stefanichik*, 559 F.3d 924, 931 (9th Cir. 2010) and *FTC v. Gill*, 265 F.3d 944 (9th Cir. 2011)).

⁸⁴ *Id.*

⁸⁵ See *CFPB v. Universal Debt & Payment Solutions, LLC*, 2019 WL 1295004, *19 (N.D. Ga. Mar. 21, 2019); *FTC v. Williams, Scott & Assocs., LLC*, 679 F. App’x 836, 839-40 (11th Cir. 2017) (net revenue of unlawful debt-relief scheme, not net profit, is the correct measure of “unjust gain” in FTC action).

⁸⁶ *Universal Debt*, 2019 WL 1295004 at *19.

⁸⁷ See “Fair Debt Collection Practices Act Annual Report 2019, CFPB (Mar. 2019), available at https://files.consumerfinance.gov/f/documents/cfpb_fdcpa_annual-report-congress_03-2019.pdf; Consumer Sentinel Network Data Book 2018, Federal Trade Commission (Feb. 2019), available at https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2018/consumer_sentinel_network_data_book_2018_0.pdf.

⁸⁸ See CFPB Proposes Regulations to Implement the Fair Debt Collection Practices Act, (May 2019), available at <https://www.consumerfinance.gov/about-us/newsroom/bureau-proposes-regulations-implement-fair-debt-collection-practices-act/>.

⁸⁹ *Id.* at 138.

⁹⁰ *Id.* at 128.

⁹¹ 15 U.S.C. § 1692c(b).

⁹² See Jun. 6, 2019 Letter from Sens. Menendez, Brown, et. al. to K. Kraninger, available at <https://www.menendez.senate.gov/news-and-events/press/in-wake-of-crackdown-on-annoying-robocalls-menendez-brown-lead-dems-in-calling-on-trump-administration-to-protect-consumers-from-abusive-debt-collection-tactics>.

⁹³ See <https://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/debt-collection-practices-regulation-f-supplemental-proposal-time-barred-debt/>

⁹⁴ 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/>.

⁹⁵ See *Pisinski and Morgan Drexen, Inc. v. CFPB*, Case No. 1:13-cv-01112 (filed Jul. 22, 2013), Declaration of Professor Todd Zywicki (DE 3-4).

⁹⁶ See 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>.

⁹⁷ See Todd Zywicki, *The CFPB Could Be a Force for Good*, *WSJ*, Feb. 19, 2018, <https://www.wsj.com/articles/the-cfpb-could-be-a-force-for-good-1519070012>.

⁹⁸ See Glenn Simpson, *New FTC Chief is Expected to Name Regulatory Skeptic to Consumer Post*, *WSJ*, <https://www.wsj.com/articles/SB991260563410239800>.

⁹⁹ See Dr. J. Howard Beales, NERA Economic Consulting, <https://www.nera.com/experts/dr-howard-beales.html>.

¹⁰⁰ See Complaint, *CFPB v. Think Finance, LLC*, Case 4:17-cv-00127-BMM (D. Mt. Nov. 15, 2017), available at https://files.consumerfinance.gov/f/documents/cfpb_think-finance_complaint_112017.pdf.

¹⁰¹ *Id.*

¹⁰² See Todd Zywicki, *Why Everything Elizabeth Warren Told You About Consumer Credit Is Wrong*, Oct. 10, 2014, <https://www.forbes.com/sites/realspin/2014/10/10/why-everything-elizabeth-warren-told-you-about-consumer-credit-is-wrong/#256cd7e0301f>.

¹⁰³ See <https://www.hudsoncook.com/attorney/jean-noonan/>.

¹⁰⁴ See <https://www.kelleydrye.com/Our-People/William-C-MacLeod>.

¹⁰⁵ See Feb. 20, 2019 Letter from K. Kraninger to Ranking Member Brown and Sen. Warren, on file with the Senate Committee on Banking, Housing, and Urban Affairs.

¹⁰⁶ *Id.*