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Pushing the Envelope: The Consumer Financial Protection Bureau Under the Trump Administration

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Sherrod Brown, Ranking Member

Pushing the Envelope: The Consumer Financial Protection Bureau Under the Trump Administration

Minority Staff Report
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Executive Summary

Congress created the Consumer Financial Protection Bureau – or CFPB – to look out for ordinary American consumers, and take on big banks and shady financial institutions that scam customers. During its first six years on the job, the Bureau stood up for working families, obtaining almost \$12 billion in relief for more than 29 million Americans, handling more than 1.2 million consumer complaints, and putting rules in place to make mortgages safer and fairer for homeowners.¹ It held Wells Fargo accountable for the bank’s egregious fake-accounts scandal. It brought landmark fair lending cases to stop redlining and other discriminatory practices. Wall Street and the financial industry have armies of lobbyists at their beck and call – the CFPB was there to deliver results for American consumers.

Since taking control of the CFPB last year, however, Mick Mulvaney has undermined the CFPB’s important mission and turned an organization meant to stand on the side of the American people into yet another outlet for the financial industry to push its agenda. A close examination of Mr. Mulvaney’s record shows that he has *undercut the Bureau, kept Congress and the public in the dark, and put his thumb on the scale in industry’s favor*. Over and over again, Mick Mulvaney has used his position at the Consumer Protection Bureau to do favors for corporate special interests, rather than look out for the American people he’s supposed to serve.

Undercutting the Bureau. Mr. Mulvaney is dismantling the agency from the inside, hiring a group of political cronies and paying them enormous salaries to run the agency into the ground. While he has repeatedly claimed that he is simply doing what the law requires, contending he will “execute the statutory mandate of the bureau to protect consumers” and “go no further,” a closer look shows that Mr. Mulvaney has cherry-picked the law to promote his ideological agenda and do favors for special interests. At times, he seems to ignore the law altogether. Examples include:

- Leaving Servicemembers and Other Borrowers to fend for themselves;
- Stripping the Bureau’s fair lending office of its enforcement powers, contrary to Congress’s instructions;
- Dissolving the office tasked with overseeing the \$1.5 trillion student loan market
- Politicizing the Bureau by installing hand-picked cronies to second guess dedicated career professionals and bringing key offices directly under his control, all while doing the bidding of the White House.
- Taking control of the CFPB even though the Dodd-Frank Wall Street Reform and Consumer Protection Act which created the agency mandated that the Deputy Director of the CFPB serve as acting Director;
- Enlisting other branches of government to undermine the CFPB’s mission, do favors for special interests, and evade the Administrative Procedure Act;

- Ignoring consumer concerns in required reports, while appropriating the CFPB’s Semi-Annual Report as a platform to promote his legislative proposals to diminish the CFPB; and

Keeping Congress and the Public in the Dark. As a member of Congress, Mr. Mulvaney denounced the CFPB for not being transparent. At the CFPB, Mr. Mulvaney has hidden its activities from the American people he’s supposed to serve:

- Mr. Mulvaney refuses to respond to congressional requests for information;
- The CFPB works to frustrate Freedom of Information Act (FOIA) requests from the public; and
- Mr. Mulvaney’s threats to shut down public access to the consumer complaints database would eliminate an important source of public information about consumer abuses and limit the public’s ability to hold the CFPB accountable for enforcing the law.

Putting His Thumb on the Scale. Mr. Mulvaney has turned an agency meant to be an objective watchdog into an arm of the industry he’s supposed to police. He may claim that he is moving the CFPB toward a more objective, evidence-based approach to policymaking, but a close study of his supposed cost-benefit analysis initiatives shows that Mr. Mulvaney has put his thumb on the scale for the financial industry time and again. And his failure to actually perform the quantitative cost-benefit analysis he called for, or base his actions on it, reveal ulterior motives for his proposals:

- The first request for information in his call for evidence explicitly states that the CFPB is seeking input from industry, without asking consumers, consumer advocates, or impartial observers for their opinions;
- A review of three key requests for information—related to investigations, enforcement, and supervision—suggests that Mr. Mulvaney has carefully designed them to achieve his desired pro-industry outcomes;
- Mr. Mulvaney has not shared any evidence of the cost-benefit analysis that he has championed in any of his decision-making; and
- Mr. Mulvaney’s creation of a new cost-benefit analysis office directly under his control suggests that he intends to use the office in politically convenient ways to justify his longstanding desire to dismantle the CFPB’s consumer protections.

I. Undercutting the Bureau

“If the very first act that someone does when they’re in the Bureau . . . is not follow the statute, that probably doesn’t set a good precedent for what’s going to come afterwards.”

– Mick Mulvaney, *Speech to the American Bankers Association, 2018*

As interim head of the CFPB, Mr. Mulvaney has repeatedly claimed that he will hew closely to the law and fulfill the Bureau’s statutory mandate to protect consumers. In an op-ed for the *Wall Street Journal*, for example, Mr. Mulvaney wrote:

I intend to exercise our statutory authority to enforce the laws of this nation. I intend to execute the statutory mandate of the bureau to protect consumers. But we will no longer go beyond that mandate. If Congress wants us to do more than it set forth in the Dodd-Frank Act, it can change the law.

The CFPB has a new mission: We will exercise, with humility and prudence, the almost unparalleled power Congress has bestowed on us to enforce the law faithfully in furtherance of our mandate. But we go no further. The days of aggressively “pushing the envelope” are over.²

Mr. Mulvaney has repeatedly expressed that sentiment. He stressed in the CFPB’s Semi-Annual Report that “the Bureau will continue to execute the law, but will no longer go beyond its statutory mandate.”³ In the CFPB’s Strategic Plan, he underscored the importance of “hewing to the statute,” writing that “[i]f there is one way to summarize the strategic changes occurring at the Bureau, it is this: we have committed to fulfill the Bureau’s statutory responsibilities, but go no further.”⁴ He has also cited this rationale as justification for a number of specific actions, such as omitting relevant information about consumer concerns from required reports to Congress.⁵

While Mr. Mulvaney claims to abide strictly by the statute that created the CFPB, his actions tell a different story.

A. Abandoning Consumer Protections for Servicemembers and Borrowers

The Wall Street Reform Act provides that “[t]he Bureau shall . . . enforce Federal consumer financial law.”⁶ From 2012 to 2017, the CFPB undertook more than 150 enforcement actions against mortgage aid schemes that ripped off struggling homeowners, predatory financial firms that set up shop next to military bases to target servicemembers, scam for-profit schools that took

advantage of veterans' benefits, and companies that trained their employees to trap consumers in debt.⁷ Since taking control of the CFPB, however, Mr. Mulvaney has selectively abandoned the Bureau's federal consumer protection role to state authorities.

In August 2018, it was reported that the CFPB would suspend routine examinations designed to identify violations of the Military Lending Act (MLA).⁸ The MLA was passed in 2006 with broad bipartisan support, and prevents predatory lenders from taking advantage of active-duty servicemembers through a number of protections including a 36% interest rate cap on loans to servicemembers and their families. In response to a Congressional inquiry, Mr. Mulvaney has claimed that the CFPB does not have the legal authority to examine financial institutions for MLA violations.⁹ He appears to have come to this decision without consulting the Department of Defense, which shares MLA authority with the Bureau and leads interagency decision-making on matters related to the MLA.¹⁰

In fact, legal experts argue that not only does the CFPB have the authority to supervise for MLA violations, but that the Bureau may be required to do so. An in-depth study from the Consumer Federation of America points out that the MLA and the CFPB's governing statute provide broad authority to supervise for violations of other laws triggered by non-compliance with the MLA as part of the Bureau's duty to detect and assess risks to consumers.¹¹ Furthermore, the text of the MLA requires that the CFPB enforce the law "in the manner set forth" by the administrative enforcement provision of the Truth in Lending Act, and that the Bureau shall enforce the MLA under "any other applicable authorities available" to the agency.¹² Despite these statutory authorities and mandates, Mr. Mulvaney has abandoned examinations for abuses of servicemembers, harming the very people who protect our country and putting military readiness at risk.

"In fact, legal experts argue that not only does the CFPB have the authority to supervise for MLA violations, but that the Bureau may be required to do so."

While possibly the most egregious, it is not the only favor Mr. Mulvaney has done for payday lenders. On February 28, 2018, Mr. Mulvaney told a conference of state attorneys general that the CFPB would "be looking to the state regulators and state attorneys general for a lot more leadership when it comes to enforcement."¹³ Mr. Mulvaney went on to indicate that the CFPB would step back from enforcement actions if state authorities "don't think it's against the law" or "don't think it's in [their] state's best interest."¹⁴ These remarks came in the wake of Mr. Mulvaney's decision to drop a case against four payday lenders accused of charging triple-digit interest rates in violation of state and federal law.¹⁵ Ultimately, Mr. Mulvaney justified dropping the case by citing opposition by two state attorneys general, adding: "Why we think we know better or how to protect consumers in your state surprises me," and "I don't think we'll be doing much of that anymore."¹⁶

These remarks are problematic for at least two reasons. First, in the lawsuit at issue, the CFPB had alleged violations of both state *and* federal law.¹⁷ Ceding the CFPB's role in enforcing federal law to state authorities is an abdication of the responsibilities that the law assigned to the Bureau, undermining Mr. Mulvaney's claim that he is "committed to fulfilling the Bureau's statutory responsibilities." Second, Mr. Mulvaney cited opposition from only two state attorneys general, while the CFPB's complaint alleged that the defendants had illegally collected on loans made to consumers in sixteen different states.¹⁸ According to the complaint, several of these other states' authorities had sent letters to the defendants in response to consumer complaints,¹⁹ with Connecticut and New York authorities alleging that the defendants' loans "appeared to violate the state usury caps" and requesting that the lenders "immediately cease collection efforts on the usurious loans."²⁰ That defendants collected on loans made in states other than the two that opposed the CFPB's lawsuit and at least two other state authorities believed that the defendants' conduct violated state law suggests that Mr. Mulvaney was selective in his deference to the states. In essence, Mr. Mulvaney sided with just two states over the interests of fourteen others.

Mr. Mulvaney's abdication of the CFPB's role will adversely affect consumers. In the payday lending lawsuit he dropped, for example, the CFPB alleged that the lenders charged interest rates ranging from 440% to 950%, failed to disclose these rates on their websites as required by the Truth in Lending Act, and refused to tell prospective borrowers the rates when asked.²¹ The lenders also allegedly attempted illegal collection of these loans even where the interest rates exceeded state usury caps.²² By dropping the CFPB's lawsuit, Mr. Mulvaney signaled that the CFPB blesses these abusive practices. As of the publication of this Report, the lenders are still doing business.²³

Meanwhile, one state attorney general has explicitly accused Mr. Mulvaney of stepping back from the CFPB's previous practice of cooperating with state law enforcement. According to Virginia Attorney General Mark Herring, Mr. Mulvaney has been "going in the opposite direction" from this previous practice and "dropping cases that were previously approved."²⁴ These remarks suggest that Mr. Mulvaney may have abandoned the CFPB's 2011 agreement with state attorneys general to support one another in enforcing consumer protection laws, including through "joint or coordinated investigations of wrongdoing and coordinated enforcement actions."²⁵ They also indicate that Mr. Mulvaney has been selective in his deference to the states.

Despite the numerous investigations that were well underway, the CFPB has brought only ten enforcement actions during the year that Mr. Mulvaney has controlled the CFPB,²⁶ with multiple investigations reportedly being dropped²⁷ along with the lawsuit discussed above. During the year before Mr. Mulvaney took control, by contrast, the CFPB brought more than forty enforcement actions.²⁸

Mr. Mulvaney's previously expressed hostility toward federal regulation of payday lending is unsurprising. As a member of Congress, Mr. Mulvaney criticized the CFPB's activities in the

payday lending space on multiple occasions. In a hearing entitled “Short-Term, Small Dollar Lending: The CFPB’s Assault on Access to Credit and Trampling of State and Tribal Sovereignty,” Mr. Mulvaney rejected the idea of a federal “floor” (i.e., minimum standards) for consumer protections in payday lending.²⁹ In a 2016 hearing, he asked then Director Cordray why the CFPB was considering regulating payday lending when “people aren’t complaining.”³⁰ In short, Mr. Mulvaney’s record demonstrates he doesn’t believe in federal oversight of payday lending.

B. Stripping the Fair Lending Office of Enforcement Powers

On January 30, 2018, Mr. Mulvaney told Bureau staff he would be reorganizing the Office of Fair Lending and Equal Opportunity by moving it within the Director’s office and stripping it of its enforcement and supervisory powers.³¹ The Wall Street Reform Act directed the CFPB to create the Office to “address consumer protection and fair lending matters,”³² in furtherance of the CFPB’s efforts to ensure that all “consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination.”³³ The law further provides that the Office “shall have such powers and duties as the Director may delegate to the Office, including . . . oversight and enforcement” of fair lending laws.³⁴

“This language shows that Congress intended for the Office’s enforcement role to be mandatory, not discretionary.”

By depriving the Office of its enforcement role, Mr. Mulvaney disregarded the Wall Street Reform Act provision calling for the Office’s powers and duties to include “enforcement” of fair lending laws. He also ignored the Act’s legislative history. Judges and legal scholars generally regard conference committee reports as the most authoritative source of legislative history.³⁵ Here, the Wall Street Reform Act conference committee report explicitly states that the “Office *will* oversee the enforcement of federal laws intended to ensure fair, equitable and nondiscriminatory access to credit.”³⁶ This language shows that Congress intended for the Office’s enforcement role to be mandatory, not discretionary.

As with selectively ceding the CFPB’s role to state authorities, this act could result in harm to consumers. In a letter to Mr. Mulvaney, fifty-four members of Congress expressed concern that the Office’s reorganization will frustrate the CFPB’s efforts to protect consumers from discrimination in lending.³⁷

Remediation for Harmed Consumers Through CFPB Fair Lending Activities

Before Mulvaney: \$400 million+
After Mulvaney: \$0

Under prior leadership, the Office of Fair Lending played a pivotal role in securing much of the over \$400 million that the CFPB obtained for harmed consumers in its fair lending supervisory and enforcement actions.³⁸ In 2015, for example, the Office led the CFPB’s case against Hudson City Savings Bank for discriminatory redlining practices that denied residents in communities of color access to mortgage loans,³⁹ which resulted in an order requiring the bank to improve its lending practices, pay \$25 million to borrowers in affected communities, and spend \$2.25 million on community programs and outreach.⁴⁰ Two years earlier, the Office led the Bureau’s case against Ally Financial for systematically charging racial and ethnic minorities higher interest rates on their auto loans,⁴¹ which resulted in an order to pay \$80 million to harmed consumers.⁴² Without the Office’s specialized oversight and enforcement expertise, it will be much harder for the Bureau to bring similar cases in the future.

The bicameral letter also asked Mr. Mulvaney whether “the CFPB perform[ed] a legal analysis to determine whether stripping the [Office] of its enforcement authority would hinder the CFPB’s ability to carry out its statutory mandate to provide oversight and enforcement of federal fair lending laws.”⁴³ In his response to the letter, Mr. Mulvaney declined to answer this question.⁴⁴

In September 2018, a newspaper investigation revealed that Mr. Mulvaney’s political appointee chosen to oversee the fair lending office, Eric Blankenstein, maintained a public blog where he voiced racist and sexist opinions.⁴⁵ When he defended his comments and received no reprimand from Bureau leadership, employees of the Office, including its Director, expressed strong misgivings that he could faithfully execute the Office’s mission.⁴⁶ The Bureau’s union has filed a mass grievance against the Bureau for its attack on the fair lending office and failure to adequately address Mr. Blankenstein’s racist comments.⁴⁷ Mr. Mulvaney’s disregard for the Office of Fair Lending and its employees demonstrates that he does not intend to fulfill the Bureau’s mandate to enforce federal fair lending laws.

C. *Dissolving the Office for Students and Young Consumers*

Similar to his gutting of the Office of Fair Lending, in May 2018, Mr. Mulvaney announced his decision to reorganize the Office for Students and Young Consumers, which had previously supported the work of the Student Loan Ombudsman, responsible for oversight of the \$1.5 trillion student loan market.⁴⁸ In a letter to Mr. Mulvaney regarding this decision, the Ranking Members of the Banking and HELP committees pointed out that, coupled with Department of Education Secretary DeVos’s decision to gut the Student Aid Enforcement Unit, redirecting resources away from student loan oversight would leave millions of borrowers at risk of abuse.⁴⁹

“Instead, you have used the Bureau to serve the wishes of the most powerful financial companies in America.”

Mr. Mulvaney’s efforts to deprive the Office for Students of the resources necessary to fulfill its mission resulted in the resignation of the CFPB’s Student Loan Ombudsman, Seth Frotman.⁵⁰ In his resignation letter, Frotman made numerous alarming accusations that Mr. Mulvaney is not faithfully executing the duties of the Bureau, and in fact is using his position to shield financial companies from scrutiny for abusive and predatory practices.⁵¹ He stated, “...the Bureau has abandoned the very consumers it is tasked by Congress with protecting. Instead, you have used the Bureau to serve the wishes of the most powerful financial companies in America.”⁵²

In response to a letter from Senators inquiring about these accusations and offering Mr. Mulvaney an opportunity to explain his decision, he provided insufficient evidence to evaluate or refute the Ombudsman’s claims, but repeated his pledge to “fulfill the requirements of the law as written.”⁵³

D. Politicizing the Bureau

As previously noted, Congress established the CFPB as an “independent bureau.”⁵⁴ This independence is reflected in a number of the CFPB’s structural features, such as protection from removal of the Director except for cause,⁵⁵ independent funding outside the highly political congressional appropriations process,⁵⁶ and protection from OMB interference with the Bureau’s operations.⁵⁷ As the D.C. Circuit Court of Appeals has explained, this means of independence “is wholly ordinary,” with Congress having given similar independence to other financial regulators.⁵⁸

Mr. Mulvaney has politicized the CFPB and undermined this independence in several ways. As a threshold matter, his control over the CFPB while simultaneously serving as OMB Director undercuts the Bureau’s independence from the White House. Because Mr. Mulvaney draws his salary from his OMB job⁵⁹ and can be fired at will from that position,⁶⁰ he is effectively subject to direct presidential control. Indeed, a tweet from President Trump about Wells Fargo penalties shows that he views Mr. Mulvaney as little more than a typical White House staffer.

Director’s Political Appointees at the CFPB

Before Mulvaney: 0
After Mulvaney: 12

In the wake of reports that the CFPB might go easy on Wells Fargo, President Trump tweeted: “Fines and penalties against Wells Fargo Bank . . . will not be dropped . . . but will be pursued and, if anything, substantially increased. I will cut Regs but make penalties severe when caught cheating!”⁶¹ While this particular instance of presidential control may align with the Bureau’s consumer protection mission, political influence could easily go in the opposite direction, with the President urging Mr. Mulvaney to reduce consumer protections and go easy on his political allies. Indeed, the President’s budget, prepared with Mr. Mulvaney as budget director, proposed significantly weakening the CFPB.⁶² With reports that Mr. Mulvaney is under consideration

for the White House chief of staff job,⁶³ the President’s control over him takes on even greater significance.

“President Trump’s tweet . . . shows that he views Mr. Mulvaney as little more than a typical White House staffer.”



Mr. Mulvaney’s closeness to the White House makes his installation of hand-picked political staffers throughout the CFPB problematic as well. Under previous leadership, the CFPB housed no political appointee apart from the Senate-confirmed Director himself.⁶⁴ Departing from this model, Mr. Mulvaney has installed throughout the Bureau⁶⁵ a dozen “Schedule C” appointees—whom he hired outside the merit-based civil service system and whom he can remove at will.⁶⁶ Mr. Mulvaney has explained that he has attempted to “marry” career staff at the head of each division of the CFPB with political staff that he controls.⁶⁷ Because both Mr. Mulvaney and each of these individuals can be removed at will—Mr. Mulvaney by the President and the political staff by Mr. Mulvaney—this effectively politicizes the entire agency. He has also detailed staff from OMB.⁶⁸

Mr. Mulvaney’s reorganization of the Office of Fair Lending and Equal Opportunity and creation of a new office for cost-benefit analysis, reporting directly to the Director, also injects politics into the CFPB. In addition to stripping the fair lending office of its enforcement and supervision authorities, Mr. Mulvaney announced that he would bring the Office’s remaining functions directly under his control.⁶⁹ Meanwhile, in announcing the creation of a new cost-benefit analysis office, Mr. Mulvaney said that this office would be under his direct control as well.⁷⁰ While quantitative analysis can be valuable, political appointees could manipulate the kind of cost-benefit analysis this office would undertake, which is vulnerable to numerous subjective assumptions.⁷¹ Because these assumptions are often both debatable and outcome determinative, it would be easy for a politicized cost-benefit analysis office to manufacture rigged analyses that support the Director’s predetermined agenda.

Staffing statistics for the CFPB also reflect this increased politicization. As shown in the table below, the Director’s office has grown by 14.7%, while overall staffing has declined by 2.4%. In other words, Mr. Mulvaney has consolidated power in his own office.

Director's Office and External Affairs Expand; Other Offices Decline				
Division/office	May '17	Nov. '17	May '18	Change since Mulvaney
Director	34	34	39	14.7%
External Affairs	42	42	46	9.5%
Consumer Education & Engagement	81	83	81	0.0%
Research, Markets & Regulations	168	165	163	-1.2%
Legal	80	79	77	-2.5%
Operations	459	454	440	-3.1%
Supervision, Enforcement & Fair Lending	764	751	724	-3.6%
Other Programs	29	25	24	-4.0%
Grand total	1,657	1,633	1,594	-2.4%
Data as of first pay period each month; does not include intern positions. Source: S&P Global, Market Intelligence				

Mr. Mulvaney’s politicization of the CFPB—beginning with his exercise of control over the Bureau while simultaneously serving as a White House official—compromises the independence that Congress gave the Bureau in the Wall Street Reform Act. This failure to adequately respect Congress’s design of the CFPB as an independent agency casts doubt on Mr. Mulvaney’s commitment to “hewing to the statute.”

E. A Shaky Foundation

Congress created the CFPB as an independent agency insulated from White House control to ensure that the Bureau would faithfully protect consumers without regard to undue political interference.⁷² To preserve this independence, the Wall Street Reform Act provides that the CFPB’s Deputy Director “shall . . . serve as acting Director in the absence or unavailability of the Director.”⁷³ By keeping the line of temporary succession internal to the Bureau, Congress helped to secure a strong, independent CFPB.

Despite this clear statutory mandate, President Donald Trump installed Mr. Mulvaney—head of the Office of Management and Budget (OMB)—as acting Director of the Bureau, ostensibly under the authority of the Federal Vacancies Reform Act.⁷⁴ A legal battle between Mr. Mulvaney and then Deputy Director Leandra English ensued.

As explained by a number of consumer financial regulation experts⁷⁵ and current and former Members of Congress who were involved in drafting the Wall Street Reform Act,⁷⁶ Mr. Mulvaney's claim to authority is without any merit.

First, a plain reading of the mandatory language of the Wall Street Reform Act makes clear that it provides the exclusive means to fill the acting Director position because it provides that the Deputy Director "shall," not "may," serve as acting Director.⁷⁷ Second, this conclusion is strengthened by the fact that Congress had explicitly provided for the Vacancies Act to control in an earlier draft of the Wall Street Reform Act, but it later removed that language.⁷⁸ Congress's final formulation, which keeps the temporary line of succession internal to the Bureau, was designed to maintain the CFPB's independence, notwithstanding a vacancy.

“[A] plain reading of the mandatory language of the Wall Street Reform Act makes clear that it provides the exclusive means to fill the acting Director position.”

Second, the choice of Mr. Mulvaney as acting Director is especially problematic. As OMB Director, Mr. Mulvaney serves at the pleasure of the President, effectively giving the President significant control over the CFPB.⁷⁹ If Mr. Mulvaney does not follow the President's instructions, the President can simply fire Mr. Mulvaney from his OMB job. Because Mr. Mulvaney draws his only salary from his role as OMB Director,⁸⁰ this puts significant pressure on Mr. Mulvaney to bend to the President's will. As a result, the choice of Mr. Mulvaney as acting Director is at odds with Congress's establishment of the CFPB as "an independent bureau."⁸¹ In addition, installing the OMB Director at the helm of the CFPB would contravene a provision in the Wall Street Reform Act that specifically shields the CFPB from OMB control. While the CFPB Director must submit certain financial reports to OMB,⁸² the law specifically provides that these requirements do not "imply[] any obligation on the part of the Director to consult with or obtain the consent or approval of the Director of [OMB] with respect to any report, plan, forecast, or other information [required by the statute] *or any jurisdiction or oversight over the affairs or operations of the Bureau.*"⁸³ If Mr. Mulvaney simultaneously heads both OMB and the CFPB, the CFPB will necessarily be under OMB oversight.

Although the trial court ruled against Ms. English, a number of observers have questioned this decision. During oral arguments on appeal, two of the three judges signaled agreement with Ms. English's argument that Mr. Mulvaney could not simultaneously serve as OMB Director and acting Director of the CFPB. Judge Patricia Millett, for example, told Mr. Mulvaney's lawyer that "[t]he end result of appointing Mr. Mulvaney is that everything the CFPB Director decides is going to be approved by the OMB Director," with Mr. Mulvaney "wearing two hats at the same time."⁸⁴ Twenty legal scholars and other consumer financial regulation experts signed an amicus brief urging the appellate court to overturn the lower court's ruling, writing that the appointment of Mr. Mulvaney "flouted Congress's will by putting the CFPB under daily White House control."⁸⁵ These scholars also wrote that the Wall Street Reform Act's directive that the Deputy

Director “shall” serve as acting Director upon the Director’s resignation was “clear.”⁸⁶ Because Ms. English’s case has been withdrawn following her resignation from the CFPB, the court of appeals will not have an opportunity to clarify whether Mr. Mulvaney is lawfully serving as acting Director.

F. Enlisting Other Branches to Repeal the Payday Rule and Sidestepping the APA

Mr. Mulvaney has also attempted to recruit other branches of government to block the CFPB’s payday rule, so that the Bureau does not need to follow the procedures set out in the Administrative Procedure Act (APA) to eliminate it. By urging both Congress and the courts to strike down or indefinitely delay the payday rule, Mr. Mulvaney has attempted an end-run around the APA’s requirement that agencies give notice of proposed rulemaking and consider public comments on their proposed rules, or efforts to change them.⁸⁷

The CFPB’s payday lending rule was designed to protect consumers from abusive debt traps by requiring covered short-term lenders to determine upfront whether borrowers can pay back their loans.⁸⁸ The CFPB finalized this rule on October 5, 2017, after a five-year rulemaking process.⁸⁹ This process leveraged extensive stakeholder outreach, insights gained from the CFPB’s supervisory and enforcement activity, years of research and analysis by CFPB economists, consultation with small businesses, consumer testing of the disclosures required by the rule, and formal notice-and-comment rulemaking under the APA.⁹⁰ In January 2018, after just a few months on the job, Mr. Mulvaney announced that the CFPB would reconsider the rule and grant waivers from its registration requirements.⁹¹

Despite highlighting the importance of APA notice-and-comment procedures in other public remarks,⁹² Mr. Mulvaney has taken steps to gut the payday rule without going through those procedures. Shortly after assuming control of the CFPB, Mr. Mulvaney urged Congress to invalidate the rule through the Congressional Review Act, having spoken with six different members of Congress about striking down the rule.⁹³ According to *American Banker*, Mr. Mulvaney told reporters that using the Congressional Review Act would be “more appropriate” than CFPB action.⁹⁴ In contrast to the APA, the Congressional Review Act allows Congress to overturn

THE PAYDAY RULE

The payday rule aims to protect consumers from abusive debt traps by requiring covered short-term lenders to determine upfront whether borrowers can pay back their loans. Key provisions include:

- **Full-payment test:** Lenders must determine upfront whether the borrower can afford their loan payments and still cover basic living expenses and major financial obligations.
- **Stopping debt traps:** Lenders must structure loans to allow the borrower to get out of debt gradually, instead of using repeated balloon payments that the borrower can never repay in full.

rules using expedited procedures without committee hearings or meaningful debate.⁹⁵ This hasty process would stand in contrast to the thorough, deliberative process that the Bureau engaged in before finalizing the payday rule. Mr. Mulvaney's request here is also unprecedented: No other agency head has publicly advocated the repeal of one of the agency's own rules through the Congressional Review Act.

After Mr. Mulvaney failed to convince Congress to repeal the payday rule, he went to the courts. In April 2018, two payday lender trade groups sued the CFPB asking the court to strike down the rule under various legal theories.⁹⁶ If successful, this lawsuit would have wiped out the rule.⁹⁷ In a highly unusual move, Mr. Mulvaney joined with the payday trade groups in May to ask the court to delay the compliance date for the rule until 455 days after the lawsuit is over *and* to put the lawsuit on hold until the CFPB reconsiders the rule.⁹⁸ In effect, this would have allowed Mr. Mulvaney to indefinitely delay the compliance date without going through notice-and-comment procedures, circumventing the APA's statutory requirements for rulemaking. In June, the court denied Mr. Mulvaney's and the trade groups' request to delay the compliance date.⁹⁹ Although the court did not explain its reasoning, other courts have viewed compliance delays as substantive rulemaking actions that must go through the APA's procedures.¹⁰⁰

G. Ignoring Consumer Concerns in Required Reports

To inform Congress and the public about the CFPB's consumer protection efforts, the Wall Street Reform Act and other laws require the Bureau to issue various periodic reports.¹⁰¹ These requirements include both targeted reports that focus on specific issues, such as on credit cards¹⁰² and on consumer complaints,¹⁰³ and a broader semi-annual report on the CFPB's activities.¹⁰⁴ Since opening its doors, the CFPB's thorough research, analysis, and reporting were the gold standard for keeping up with the challenges facing everyday consumers. A review of the reports issued by Mr. Mulvaney, however, shows that he has frequently ignored consumer concerns, even while appropriating the CFPB's Semi-Annual Report as a platform for his own legislative proposals. In short, Mr. Mulvaney has used his discretion to promote industry interests, while doing as little for consumers as he can get away with.

“By failing to consider areas for concern, the CFPB skirted its obligation to review ‘the adequacy of protections against unfair or deceptive acts or practices.’”

Mr. Mulvaney's failure to address consumer concerns is most readily apparent in the CFPB's December 2017 report on the consumer credit card market, required by section 502(a) of the CARD Act.¹⁰⁵ The CARD Act requires a review of both descriptive facts about the credit card market and “the adequacy of protections against unfair or deceptive acts or practices relating to credit card plans.”¹⁰⁶ In a departure from prior reports, the 2017 report does not mention “areas of concern for consumers.”¹⁰⁷ The CFPB's 2015 report, by contrast, analyzed several such areas, including the lack of transparency in so-called “deferred interest products,” high costs for

subprime credit cards, and risks related to variable interest rates.¹⁰⁸ The one mention of a consumer concern in the 2017 report raises a previous concern on reward programs and only cites a letter from bank lobbyists that “highlight[ed] ‘principles that undergird [their] commitment to consumers.’”¹⁰⁹ By failing to consider areas for consumer concern, the CFPB skirted its obligation to review “the adequacy of protections against unfair or deceptive acts or practices.”

Under Mr. Mulvaney, the CFPB has ignored consumer concerns in other reports as well. For example, its 2018 College Credit Card Agreements Report—previously known as its “Student Banking” report¹¹⁰—departs from prior reports by omitting information on other financial products sold to students, such as debit cards, and declining to criticize colleges for failing to meet their obligations under the CARD Act to publicly disclose their college credit card agreements.¹¹¹ In response to a letter from a member of the Committee, Mr. Mulvaney explained that the CARD Act “does not refer to debit card or bank account agreements,” and he “will continue to fulfill the requirements of the law as written.”¹¹² Yet addressing student banking holistically would certainly be consistent with the CFPB’s mandate to ensure that “markets for consumer financial products and services are fair, transparent, and competitive.”¹¹³ Meanwhile, the first Semi-Annual Report under Mr. Mulvaney devotes only two pages, on “credit invisibles” and “financial education,” to significant consumer concerns,¹¹⁴ and another three pages on consumer complaints.¹¹⁵ The last Semi-Annual Report issued under Mr. Mulvaney’s predecessor, by contrast, had spent twenty-seven pages discussing such challenges, and the overall report was over three times as long.¹¹⁶ The Wall Street Reform Act requires this report to discuss “significant problems faced by consumers in shopping for or obtaining consumer financial products or services.”¹¹⁷

This failure to address consumer concerns can be contrasted with Mr. Mulvaney’s discretionary inclusion of four legislative proposals in his Semi-Annual Report to Congress. The Wall Street Reform Act requires this report to contain specific, timely information related to consumer challenges and the CFPB’s recent activities, namely (1) “a discussion of the significant problems faced by consumers in shopping for or obtaining consumer financial products or services,” (2) “justification of the budget request of the previous year,” (3) a list of “significant initiatives conducted by the Bureau,” (4) an analysis of consumer complaints, (5) a list of the CFPB’s public supervisory and enforcement actions, (6) actions taken regarding nonbank financial institutions, (7) discussion of significant actions by state authorities, (8) an analysis of the CFPB’s fair lending efforts, and (9) analysis of the CFPB’s diversity and inclusion efforts.¹¹⁸ Nowhere does the Wall Street Reform Act require the Director to opine on legislation in the report. Nevertheless, Mr. Mulvaney requested in his first Semi-Annual Report that Congress fund the CFPB through appropriations, require legislative approval of major CFPB rules, subject the CFPB to presidential control, and create a separate inspector general for the CFPB.¹¹⁹ Rather than focus on initiatives that would weaken the Bureau, by contrast, the previous Director’s report focused on issues faced by consumers.¹²⁰

As justification for including these proposals, Mr. Mulvaney cited section 1012(c)(4) of the Wall Street Reform Act, which he described as “contemplat[ing] that the Director will submit independent legislative recommendations to Congress.”¹²¹ His citation of this provision, however, was self-serving and misleading. In context, the purpose of the provision is to ensure the CFPB’s independence from the Fed, not require the Director to submit legislative recommendations to Congress or require the Director to include such recommendations in the CFPB’s Semi-Annual Report.¹²² Mr. Mulvaney’s decision to include legislative proposals in the report was discretionary, not required by law.

In short, Mr. Mulvaney’s refusal to include concerns about consumer abuses in CFPB reports, coupled with his willingness to use the CFPB’s Semi-Annual Report as a platform to advance his own proposals, highlights how Mr. Mulvaney is willing to use his discretion to help industry, but refuses to use it in any way that would advance the mission that Congress actually gave the CFPB: protecting consumers.

II. Keeping Congress and the Public in the Dark

“I think it’s important that we bring some transparency and accountability to this bureau”

– Mick Mulvaney, Hearing Before the House Committee on Financial Services, 2018

If you take him at his word, Mr. Mulvaney places great value on transparency. As a member of Congress, he repeatedly denounced the CFPB for failing to be transparent. In a letter to then-Director Cordray on the CFPB’s forced arbitration rulemaking, for example, Mr. Mulvaney criticized the CFPB’s purported “unwillingness to provide substantive responses to Congressional requests for a transparent, inclusive process,” which he claimed “casts doubt on [Cordray’s] public commitments to work together with Congress on consumer protection.”¹²³ Mr. Mulvaney condemned the CFPB’s arbitration study as not being “fair, transparent, or comprehensive,”¹²⁴ and on multiple occasions, he urged transparency in the CFPB’s payday lending rulemaking.¹²⁵ Other examples exist as well.¹²⁶ Mr. Mulvaney has also reiterated his call for transparency more recently, saying at a House hearing last April that “it’s important that we bring some transparency and accountability to this bureau.”¹²⁷

Contrary to these public statements, Mr. Mulvaney’s actions at the Bureau intentionally keep Congress and the public in the dark. Specifically, he has repeatedly obfuscated and deflected in response to requests for information from both Congress and the public, and his threats to shut

down public access to the consumer complaints database would undermine transparency and accountability for both the financial institutions regulated by the CFPB and the Bureau itself.

A. Dodging Congressional Requests for Information

From 2011 to 2017, senior CFPB officials offered thorough and thoughtful testimony to Congress by appearing in front of committees more than 60 times, and offering up thousands of pages of records in response to Republican document requests. Since Mr. Mulvaney assumed control of the CFPB, members of Congress have asked him various questions in hearings and written letters. Many of these questions are basic factual questions or requests for specific documents that could be easily produced. However, Mr. Mulvaney has frequently answered evasively or ignored questions altogether, and in at least one instance, he failed to tell the truth.

Consider Mr. Mulvaney’s response in a Senate Banking Committee hearing regarding whether he had “rubbed elbows with payday CEOs or their lobbyists and lawyers in exotic locations.”¹²⁸ Mr. Mulvaney responded: “No, sir. The only contact that I’ve had that I know of with anybody associated with the industry was as part of our community groups that we have.”¹²⁹ He went on to explain that he had met with industry-affiliated individuals “in the ordinary course of business,” but this was the only contact of which he was aware.¹³⁰ In fact, as reported by *The New York Times*, Paul Reddam, the founder of CashCall—a company that offers triple-digit-interest-rate payday loans¹³¹—spoke with Mr. Mulvaney at a golf event in the Bahamas about the CFPB’s case against the company for its high-cost loans.¹³² According to the *Times*’s sources, Mr. Mulvaney “responded that he thought all of the payday cases had already been dismissed, but would refer the request to a deputy.”¹³³ An inquiry by the Committee obtained confirmation of this encounter from Reddam’s attorneys.¹³⁴

Meanwhile, Mr. Mulvaney’s written responses to congressional requests for information have often failed to answer basic factual questions. Illustrative is Mr. Mulvaney’s response to a letter asking how his ties to the payday lending industry may have impacted several of his pro-industry decisions.¹³⁵ The Senators’ letter asked Mr. Mulvaney to provide any documentation of communications with industry representatives prior to the decisions to halt implementation of the payday rule, reconsider the rule through a rulemaking, dismiss a CFPB lawsuit against several payday lenders, and drop its investigation of a specific payday lender.¹³⁶ In responding, Mr. Mulvaney failed to provide any of this documentation or even acknowledge the request. Instead, he simply rejected any link between the multiple pro-industry actions, criticized the Senators for asking, and suggested they “discuss policy matters.”¹³⁷

“In response to one request, Mr. Mulvaney copied and pasted part of a publicly available regulatory filing . . . and claimed it was responsive.”

Mr. Mulvaney has been equally evasive in other responses. For example, when asked about reports that the CFPB would freeze collection of consumers' data used to track consumer complaints and identify discrimination,¹³⁸ Mr. Mulvaney sidestepped the question by stating that, as acting Director, he had “near complete discretion and autonomy regarding how the Bureau will meet its statutory obligations,” and that he would continue data collection in instances where not doing so would “unduly hamper” the CFPB’s ability to carry out its obligations.¹³⁹ Likewise, when asked about the impact of a freeze on the Civil Penalty Fund and the criteria Mr. Mulvaney would use to determine whether to make an “exception,”¹⁴⁰ Mr. Mulvaney responded with a largely boilerplate response about how the Civil Penalty Fund works.¹⁴¹ Responses to inquiries regarding Mr. Mulvaney’s decisions to reorganize the Office of Fair Lending and Equal Opportunity¹⁴² and stop reporting on a number of risks to students in the CFPB’s student banking report¹⁴³ were similarly oblique. In response to one request, Mr. Mulvaney copied and pasted part of a publicly available regulatory filing with another agency and claimed it was responsive.¹⁴⁴

In some instances, Mr. Mulvaney has failed to respond to Congressional inquiries at all.¹⁴⁵

B. Evading FOIA Requests from the Public

Enacted in 1966, FOIA provides the public with the right to access records from any federal agency, subject to certain exemptions.¹⁴⁶ FOIA also authorizes agencies to collect fees to cover the costs of processing requests, but limits these fees based on the type of requester. For news media and certain other noncommercial requesters, FOIA and CFPB regulations limit fees to document duplication costs.¹⁴⁷

Based on the CFPB’s responses to one requester, Allied Progress, the CFPB under Mr. Mulvaney appears to have changed its FOIA practices to hide its activities from public view. On November 21, 2017—less than a week before Mr. Mulvaney started at the Bureau—the CFPB determined that Allied Progress was an exempt noncommercial requester for fee purposes and limited fees to duplication costs (which are negligible for electronic documents).¹⁴⁸ After Mr. Mulvaney seized control of the Bureau, however, the CFPB changed its determination. In response to a series of FOIA requests submitted in January 2018, the CFPB, led by Mr. Mulvaney, stated that it no longer considered Allied Progress to be exempt from search fees and provided fee estimates in the thousands of dollars per request.¹⁴⁹ In one case, the CFPB demanded \$61,564 in processing fees.¹⁵⁰ For comparison, the CFPB collected a total of \$26,657 in fees to process requests *for all of fiscal year 2017*.¹⁵¹

“In one case, the CFPB demanded \$61,564 in processing fees. For comparison, the CFPB collected a total of \$26,657 in fees to process requests for all of fiscal year 2017.”

Ultimately, on April 23, 2018, the CFPB reversed its determination that Allied Progress did not qualify for an exemption from search fees,¹⁵² but it did so only after the organization lodged a formal appeal.¹⁵³ In the meantime, over three months had elapsed since the initial request. The CFPB did not explain its initial departure from its prior determination, and it took a full month to respond to Allied Progress's appeal.¹⁵⁴ This month-long delay reflects the maximum delay allowed by law (twenty business days).¹⁵⁵ It is also about 50% longer than the CFPB's average response time during the previous fiscal year (twenty *calendar* days).¹⁵⁶

C. Opposing Public Access to the Consumer Complaints Database

Finally, Mr. Mulvaney has made public comments threatening to eliminate public access to the CFPB's consumer complaint database, which hosts over one million complaints on issues ranging from errors in credit reports to abusive debt collection.¹⁵⁷ The CFPB made these complaints public to ensure accountability for both financial institutions and the Bureau itself, as well as help individual consumers and researchers to better understand the issues working families encounter. The database has allowed the CFPB to identify patterns of abusive behavior, and stop them before they have a chance to spread.

Mr. Mulvaney has expressed disdain for this database, leading some consumer advocates to worry that he will shut down public access.¹⁵⁸ At an American Bankers Association conference last April, he said that he does not "see anything in [the Wall Street Reform Act] that says I have to run a Yelp for financial services," and he "could make the case" against making the complaints public without having "completely vetted" them.¹⁵⁹ Currently, the CFPB already takes measures to verify that complaints only come from customers that actually have an account or application with the institution.¹⁶⁰ Mr. Mulvaney's accusation about a lack of "vetting" tracks an earlier proposal he made when he was a member of Congress: Mr. Mulvaney sponsored a bill that would bar the CFPB from making complaints public "without first verifying the accuracy of all facts alleged in such complaint."¹⁶¹ Of course, given the large volume of complaints received by the CFPB, it would not be feasible for the Bureau to verify "the accuracy of all facts" underlying each complaint. The CFPB has received over a million complaints since its inception, making for an average of over 100,000 each year.¹⁶² This task would be even more difficult in light of the proposed budget cuts to the Bureau reflected in the President's budget plan overseen by Mr. Mulvaney.¹⁶³ Nor would most industry participants support the CFPB being the final adjudicator of every fact alleged in the database.

Regardless of whether the law requires public access, shielding the database from public view conflicts with Mr. Mulvaney's previous comments condemning the CFPB for a lack of transparency. Not only would eliminating public access make it harder to keep financial institutions honest, but it would also allow *the Bureau* to escape accountability by making it harder to judge whether the CFPB was adequately addressing consumer complaints.

III. Putting His Thumb on the Scale

“There will be a lot more math in our future.”

– *Mick Mulvaney, The Wall Street Journal, 2018*

In his *Wall Street Journal* op-ed, Mr. Mulvaney wrote that the CFPB “will focus on quantifiable and unavoidable harm to the consumer” in its enforcement activities; “[d]ata . . . should, and will, guide our actions”; and “quantitative analysis should drive our decisions,” with there being “a lot more math in our future.”¹⁶⁴ In the CFPB’s Strategic Plan, Mr. Mulvaney emphasized the importance of conducting “empirical assessments to evaluate the effectiveness of significant Bureau rules,”¹⁶⁵ “carefully evaluat[ing] the potential benefits and costs of contemplated regulations,”¹⁶⁶ and “[a]cquir[ing] and analyz[ing] qualitative and quantitative information and data.”¹⁶⁷

Two actions are intended to demonstrate this purported move toward a more objective, evidence-based approach to policymaking. First, Mr. Mulvaney has issued a “call for evidence” in the form of a series of “requests for information” (RFIs) to the public about their views on the CFPB’s various functions.¹⁶⁸ Second, he has called for increased cost-benefit analysis—and especially quantitative cost-benefit analysis—at the Bureau.¹⁶⁹

It is worth noting that the CFPB has always taken an evidence-based approach to rulemaking. For example, the CFPB spent about twenty pages in the Federal Register describing the cost-benefit analysis its research division undertook in connection with its final rule requiring mortgage lenders to consider borrowers’ ability to repay.¹⁷⁰ In advance of its forced arbitration rule, the CFPB released a 728-page study,¹⁷¹ and it spent almost thirty pages in the Federal Register discussing the cost-benefit analysis underlying its final rule.¹⁷² The Bureau has also used various experimental methods, for example to assess the effectiveness of disclosure forms.¹⁷³ Indeed, the CFPB’s Strategic Plan released under Mr. Mulvaney’s leadership notes that the Bureau’s Research, Markets, and Regulations Division already undertakes evidence-based rulemaking activities, such as disclosure testing, lab experiments, randomized control trials, and scientific surveys.¹⁷⁴ This is not a new initiative; the CFPB’s previous Strategic Plan, released in April 2013, called on the Research, Markets, and Regulations Division to “[a]rticulate a research-driven, evidence-based perspective on consumer financial markets, consumer behavior, and regulations.”¹⁷⁵ The thoroughness of the Bureau’s approach to date make Mr. Mulvaney’s claims that he intends to ramp up the CFPB’s objective, evidence-based approach to rulemaking seem suspicious.

Mr. Mulvaney’s RFIs and bait-and-switch regarding cost-benefit analysis show that he is putting his thumb on the scale. First, the particulars of these RFIs reflect a strong bias toward industry. This bias is most clearly evident in the first RFI, which only requests information from the targets of CFPB investigative requests and their lawyers (without soliciting information from

consumers, consumer advocates, or impartial observers), and in the tone of and specific questions posed in three key RFIs on Civil Investigative Demands (CIDs), enforcement, and supervision. Second, despite Mr. Mulvaney’s calls for increased quantitative cost-benefit analysis, none of the CFPB’s major actions under his tenure have been accompanied by such analysis. Rather, the only thing Mr. Mulvaney has done is create a new cost-benefit analysis office that allows him to be the sole arbiter of costs and benefits. The bias underlying Mr. Mulvaney’s RFIs, lack of demonstrated cost-benefit analysis accompanying his policy decisions, and decision to house the new cost-benefit analysis office directly under his control suggest that he plans on using the façade of objective, evidence-based policymaking as camouflage for taking pro-industry, anti-consumer actions.

A. The “Call for Evidence”

On January 17, 2018, Mr. Mulvaney announced a “call for evidence to ensure the Bureau is fulfilling its proper and appropriate functions to best protect consumers.”¹⁷⁶ To implement this “call for evidence,” the CFPB published a series of RFIs asking for public input in twelve different areas, ranging from the Bureau’s enforcement processes to its financial education programs.¹⁷⁷ Though the RFIs are framed as a way to obtain useful information relevant to the Bureau’s functions and thus facilitate an objective, evidence-based approach to policymaking, a close look at three of these RFIs—on CIDs, enforcement processes, and supervision processes—provides little confidence that Mr. Mulvaney will consider input he doesn’t already agree with.

The target audience of the first RFI, related to CIDs, makes its intent clear—soliciting public input “from entities who have received one or more CIDs from the Bureau, or members of the bar who represent these entities.”¹⁷⁸ In plain English, Mr. Mulvaney wants the opinions of the targets of CFPB investigative requests, like Wells Fargo and Equifax. The RFI does not ask consumers, consumer advocates, or impartial observers for their opinions. Although later RFIs also mention non-industry individuals and entities, the exclusive reference to industry groups in the first RFI indicates that Mr. Mulvaney intends to use the information gathered through the RFIs solely to advance industry interests, rather than protect consumers.

“The focus is clear: Mr. Mulvaney intends to use the RFI to reduce burdens on companies, not strengthen the CFPB’s ability to detect violations of law.”

The content of the RFIs also evinces a pro-industry bias. Consider the RFI on CIDs. A CID is a request made by the CFPB’s Office of Enforcement when it needs information to investigate a suspected violation of law.¹⁷⁹ A recipient of a CID can challenge the demand by petitioning the Bureau’s Director, who can then affirm the demand, modify it, or set it aside altogether.¹⁸⁰ In its overview, the RFI on CIDs requests “public comment on how best to achieve meaningful burden reduction or other improvement to the CID processes while continuing to achieve the Bureau’s

statutory and regulatory objectives.”¹⁸¹ The focus is clear: Mr. Mulvaney intends to use the RFI to reduce burdens on companies, not strengthen the CFPB’s ability to detect violations of law.

The specific issues flagged in the CID RFI bear this out. The first two questions request information on the CFPB’s process for initiating investigations and issuing CIDs, respectively, including the CFPB’s delegation of authority to high-level career staff to initiate investigations and issue CIDs.¹⁸² In essence, these two questions invite commenters to propose limitations on these officials’ investigative powers, thereby making it more difficult for the CFPB to investigate suspected wrongdoing and protect consumers. If the CFPB were to consolidate these powers among Mr. Mulvaney’s political appointees, this action would also politicize the CFPB’s investigative work, giving well-heeled industry interests a new opportunity to contest the CFPB’s efforts to protect consumers. Other questions in the RFI invite similar reductions in the CFPB’s investigative powers, such as limitations on the scope of CIDs and the taking of testimony from entities.¹⁸³ Limitations on “scope” could reduce the amount of information that the CFPB could collect, again hampering the CFPB’s ability to detect and investigate wrongdoing.

Indeed, bank lobbyists have used the CID RFI as an opportunity to present the CFPB with a wish list of limitations on the Bureau’s investigative authorities. One thirty-five-page letter from the Financial Services Roundtable, Consumer Bankers Association, and Consumer Mortgage Coalition, for example, recommends a host of limitations ranging from reducing the CFPB’s ability to collect data through CIDs to shortening the CFPB’s deadlines for responding to CID recipients while extending CID recipients’ deadlines for responding to the CFPB.¹⁸⁴ In explaining their complaints with the Bureau, the lobbyists specifically cited CFPB actions against Navient and Wells Fargo for abusive student loan servicing practices,¹⁸⁵ among other things. The CFPB sued Navient in early 2017 “for systematically and illegally failing [student] borrowers at every stage of repayment,”¹⁸⁶ and it settled with Wells Fargo in 2016 over “illegal private student loan servicing practices that increased costs and unfairly penalized certain student loan borrowers.”¹⁸⁷

In the past, CIDs have been critical to the Bureau’s success in stopping wrongdoers and obtaining relief for harmed consumers. For example, CIDs played a crucial role in the CFPB’s investigation of the Wells Fargo fake accounts scandal. In a 2017 letter, then Director Cordray wrote that CIDs allowed the CFPB to obtain “information that was essential to the investigation,” such as a quantification of the sales-practices violations and consumer harm.¹⁸⁸

The enforcement and supervision RFIs strike a similar pro-industry tone. Like the CID RFI, both the enforcement and the supervision RFIs frame their goals in terms of “meaningful burden reduction.”¹⁸⁹ Read with this goal in mind, the specific questions posed invite various limitations on the CFPB’s investigative, enforcement, and supervisory authorities, in areas such as the length of investigations;¹⁹⁰ the monetary penalties assessed;¹⁹¹ the standard terms of the CFPB’s consent orders;¹⁹² and the timing, frequency, and scope of supervisory exams.¹⁹³ These limitations could frustrate the CFPB’s ability to detect, investigate, and enforce violations of

consumer protection laws, ultimately allowing more wrongdoers to get away with cheating consumers and breaking the law.

Again, bank lobbyists have used the enforcement and supervision RFIs as opportunities to present the CFPB with wish lists of limitations on the Bureau's enforcement and supervision authorities.¹⁹⁴

B. Cost-Benefit Analysis Bait and Switch

Mr. Mulvaney promised to rely heavily on quantitative cost-benefit analysis, stating that “[t]here will be a lot more math in [the CFPB’s] future.”¹⁹⁵ These remarks track a longstanding push by Wall Street for quantitative cost-benefit analysis in financial regulation, purportedly offered as an objective, neutral framework for policymaking.¹⁹⁶

“ . . . a longstanding push by Wall Street . . . ”

As a number of academics have recognized, there are strong reasons to question these calls for reducing complex financial regulation to a simple, quantitative analysis.¹⁹⁷ Industry costs are easy to quantify, but as the 2008 financial crisis demonstrated, the cost of inaction only becomes apparent after it’s too late. As Harvard Law School professor John Coates puts it, *quantitative* cost-benefit analysis of financial regulation “amounts to no more than ‘guesstimation,’ entailing: (a) causal inferences that are unreliable under standard regulatory conditions; (b) the use of problematic data; and/or (c) the same kinds of contestable, assumption-sensitive macroeconomic or political modeling used to make monetary policy.”¹⁹⁸ Columbia Law School professor Jeffrey Gordon goes even further, calling quantitative cost-benefit analysis in financial regulation “conceptually wrongheaded, empty.”¹⁹⁹ But even if the premise underlying this push were sound, Mr. Mulvaney’s actions suggest ulterior motives for his call for quantitative cost-benefit analysis at the Bureau.

To start, Mr. Mulvaney has not publicly released quantitative cost-benefit analysis in connection with any of his significant policy decisions. For example, on January 16, 2018, the CFPB announced that it would reconsider its payday lending rule and offer waivers to payday lenders who might have to “engage in work” to meet the deadline to register under the rule.²⁰⁰ This statement was not accompanied by any quantitative analysis, even though the decision to reconsider the rule could divert significant staff resources that would otherwise be used to protect consumers. Similarly, the CFPB did not publicly release any quantitative analysis in connection with its announcement that it would reconsider its 2015 Home Mortgage Disclosure Act rulemaking and, in the meantime, would not fine institutions for errors in their data submitted under the rule.²⁰¹ These data help to shed light on discriminatory lending, but are ignored by Mr. Mulvaney without any quantitative justification.²⁰²

Nor has Mr. Mulvaney publicly released any quantitative cost-benefit analysis in connection with the few enforcement actions that the CFPB has brought under his tenure. For example, in

this year's enforcement action against Citibank for overcharging 1.75 million credit card customers by \$335 million, the CFPB did not release any quantitative analysis in connection with its decision to forego penalties against the bank.²⁰³ Instead, the CFPB cited Citibank's self-identification and self-reporting of the violations and self-initiation of remediation as reasons for declining to assess a penalty.²⁰⁴ But this is a *qualitative* judgment, not a quantitative judgment, and even as qualitative cost-benefit analysis, it lacks any consideration of the benefits that a penalty would have produced, such as deterring future violations. Mr. Mulvaney did not even analyze the decision against the CFPB's published guidance on self-reporting.²⁰⁵ Likewise, the CFPB has not released any quantitative cost-benefit analysis in connection with any of the other five enforcement actions brought under Mr. Mulvaney's tenure.²⁰⁶

In at least one way, Mr. Mulvaney has even decreased the CFPB's data-collection capacity. On multiple occasions, Mr. Mulvaney has cited the high number of debt collection complaints as a reason to prioritize that area,²⁰⁷ leading to an announcement that the CFPB would propose new rulemaking on debt collection.²⁰⁸ However, on December 19, 2017, the CFPB withdrew a request to OMB to conduct an online survey of 8,000 individuals related to debt collection disclosures.²⁰⁹ The OMB notice of this withdrawal contained only this explanation for the decision: "Bureau leadership would like to reconsider the information collection in connection with its review of the ongoing related rulemaking."²¹⁰ When asked by Committee staff about this request, Mulvaney aide (and current acting Deputy Director) Brian Johnson could not explain the withdrawal.²¹¹

Mr. Mulvaney's only concrete step toward quantitative cost-benefit analysis at the Bureau is the announcement of a new cost-benefit analysis office, within his own office.²¹² But given the extensive cost-benefit and evidence-based analysis already conducted by the Bureau's economists in the Research, Markets, and Regulations Division, perhaps there are ulterior motives for this decision: Mr. Mulvaney hopes to bring the Bureau's evidence-based analysis directly under his control so he can further influence it, as he did at OMB.²¹³ Indeed, housing the office under the Director reflects a broader pattern in which Mr. Mulvaney has installed political appointees to oversee various Bureau divisions²¹⁴ and has otherwise taken steps to exert political influence over functions previously performed by career CFPB officials, such as by bringing the fair lending office under the Director's office.²¹⁵

Conclusion

As this Report has demonstrated, Mr. Mulvaney's actions undermine the CFPB's mission and damage the reputation of the agency he is charged to lead. Rather than follow the spirit of the law, Mr. Mulvaney has consistently sought to undercut the Bureau, keep Congress and the public in the dark, and put his thumb on the scale in favor of industry's wishes. It is hard to know exactly how much harm consumers are suffering as a result. Under this Administration, the CFPB's ability to be the best source of information on risks to consumers is threatened. And the appearance that Mr. Mulvaney is sweeping consumer harms under the rug is all the more troubling.

The CFPB has been a great success story. It has obtained billions of dollars in relief for working families. It has protected consumers from a host of unfair, deceptive, and abusive practices, including predatory payday lenders, scam debt collectors, and illegal loans that target servicemembers. It has held wrongdoers like Wells Fargo accountable for violating the law.

The CFPB must continue this important work, and that is why it is so critical that the Bureau have a Director whose focus is on protecting consumers not helping industry. Mr. Mulvaney has undermined the Bureau's mission at nearly every turn, and President Trump's pick to succeed him, Kathy Kraninger, has refused to repudiate any of Mr. Mulvaney's actions.²¹⁶ President Trump should nominate a serious candidate, with real consumer protection experience and a genuine commitment to the Bureau's mission, to lead the CFPB.

Endnotes

¹ Zixta Q. Martinez, Six Years Serving You, CFPB (July 21, 2017), <https://www.consumerfinance.gov/about-us/blog/six-years-serving-you>.

² Mick Mulvaney, “The CFPB Has Pushed Its Last Envelope”, Wall St. J. (Jan. 23, 2018) [hereinafter Mulvaney, Last Envelope], <https://www.wsj.com/articles/the-cfpb-has-pushed-its-last-envelope-1516743561>.

³ See CFPB, Semi-Annual Report of the Bureau of Consumer Financial Protection 1 (2018) [hereinafter CFPB, Semi-Annual Report], https://files.consumerfinance.gov/f/documents/cfpb_semi-annual-report_spring-2018.pdf.

⁴ CFPB, Bureau of Consumer Financial Protection Strategic Plan: FY 2018 – FY 2022, at 2 (2018) [hereinafter CFPB, Strategic Plan FY 2018 – FY 2022], https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_strategic-plan_fy2018-fy2022.pdf.

⁵ See CFPB, Semi-Annual Report, supra, at 1 (“Shortly after President Trump appointed me as Acting Director, I made it clear that the Bureau will continue to execute the law, but will no longer go beyond its statutory mandate. In enacting Section 1016(c) of the Dodd-Frank Act, Congress enumerated nine elements for inclusion in the Bureau’s semi-annual reports to Congress. This semi-annual report precisely meets this mandate.”); Letter from Mick Mulvaney, Office of Management and Budget, to Jack Reed, United States Senate (Feb. 7, 2018) (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs) (explaining that a report required by the CARD Act omits information related to debit or bank account agreements because the statute “does not refer to debit card or bank account agreements,” and Mr. Mulvaney “will continue to fulfill the requirements of the law as written”).

⁶ 12 U.S.C. § 5511(a).

⁷ See Enforcement Actions, CFPB, <https://www.consumerfinance.gov/policy-compliance/enforcement/actions> (last visited Aug. 1, 2018); Press Release, CFPB Halts Alleged Nationwide Mortgage Loan Modification Scams (Dec. 11, 2012), <http://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-halts-alleged-nationwide-mortgage-loan-modification-scams/>; Press Release, CFPB Takes Action Against Military Allotment Processor for Charging Servicemembers Hidden Fees (Apr. 20, 2015), <http://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-military-allotment-processor-for-charging-servicemembers-hidden-fees/>; Press Release, CFPB Sues For-Profit Corinthian Colleges for Predatory Lending Scheme (Sept. 16, 2014), <http://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-for-profit-corinthian-colleges-for-predatory-lending-scheme/>; Press Release, CFPB Takes Action Against ACE Cash Express for Pushing Payday Borrowers Into Cycle of Debt (July 10, 2014), <http://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-ace-cash-express-for-pushing-payday-borrowers-into-cycle-of-debt>.

⁸ Glenn Thrush, “Mulvaney Looks to Weaken Oversight of Military Lending”, New York Times, (August 10, 2018), <https://www.nytimes.com/2018/08/10/us/politics/mulvaney-military-lending.html>.

⁹ Letter from Mick Mulvaney to Jack Reed, et al. (November 21, 2018). On file with the Minority Staff of the Senate Committee on Banking, Housing and Urban Affairs.

¹⁰ Letter from Stephanie Barma to Senator Nelson (September 27, 2018). On file with Minority Staff of the Senate Committee on Banking, Housing and Urban Affairs.

¹¹ See Christopher L. Peterson for the Consumer Federation of America: Missing in Action? Consumer Financial Protection Bureau Supervision and the Military Lending Act, (November 1, 2018). Available at: <https://consumerfed.org/wp-content/uploads/2018/11/missing-in-action-cfpb-supervision-and-the-military-lending-act.pdf>.

¹² See id. pps 28-30.

¹³ Mick Mulvaney, Remarks Before the National Association of Attorneys General (Feb. 28, 2018) [hereinafter Mulvaney, State AG Speech], <https://www.c-span.org/video/?441853-4/consumer-financial-protection-bureau-acting-director-mick-mulvaney>.

¹⁴ Id.

¹⁵ See Press Release, CFPB Sues Four Online Lenders for Collecting on Debts Consumers Did Not Legally Owe (Apr. 27, 2017), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-four-online-lenders-collecting-debts-consumers-did-not-legally-owe>.

¹⁶ Mulvaney, State AG Speech, supra.

¹⁷ Complaint ¶¶ 142, 147, 152, 163, 168, 172, CFPB v. Golden Valley Lending, Inc., No. 17-cv-3155 (N.D. Ill. Apr. 27, 2017). Although part of the CFPB’s legal theory for violations of federal law rested on violations of state law—

namely, state licensing requirements and usury caps—the CFPB also alleged Truth in Lending Act violations that were independent of any state law violations. See id. ¶¶ 163, 168, 162.

¹⁸ See id. ¶¶ 128–131.

¹⁹ Id. ¶ 100.

²⁰ Id. ¶ 101.

²¹ Id. ¶¶ 49, 59, 66.

²² Id. ¶ 111.

²³ About Tribal Loans, Golden Valley Lending, <https://www.goldenvalleylending.com/about-tribal-loans>; About Tribal Loans, Silver Cloud Financial, <https://www.silvercloudfinancial.com/about-tribal-loans>; About Tribal Loans, Mountain Summit Financial, <https://www.mountainsummitfinancial.com/about-tribal-loans>; About Tribal Loans, Majestic Lake Financial, <https://www.majesticlakefinancial.com/about-tribal-loans>.

²⁴ Yuka Hayashi, States Target Consumer Issues as Federal Oversight Eases, Wall St. J. (Apr. 5, 2018), <https://www.wsj.com/articles/states-target-consumer-issues-as-federal-oversight-eases-1522920601>.

²⁵ See Press Release, CFPB and National Association of Attorneys General Presidential Initiative Working Group Release Joint Statement of Principles (Apr. 11, 2011), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-and-national-association-of-attorneys-general-presidential-initiative-working-group-release-joint-statement-of-principles>.

²⁶ Enforcement Actions, CFPB, <https://www.consumerfinance.gov/policy-compliance/enforcement/actions> (last visited July 31, 2018).

²⁷ See Michael E. Miller, “Federal Consumer Watchdog Suspends Probe into Firm Accused of Preying on Detained Immigrants”, Wash. Po. (Dec. 5, 2017), https://www.washingtonpost.com/local/federal-consumer-watchdog-suspends-probe-into-firm-accused-of-preying-on-detained-immigrants/2017/12/05/3452f8ca-d9e3-11e7-a841-2066faf731ef_story.html; Josh Keefe, “CFPB Drops Investigation Into Payday Lender That Contributed To Mick Mulvaney’s Campaigns”, (Jan. 23, 2018), <https://www.ibtimes.com/political-capital/cfpb-drops-investigation-payday-lender-contributed-mick-mulvaney-campaigns>.

²⁸ Enforcement Actions, CFPB, <https://www.consumerfinance.gov/policy-compliance/enforcement/actions> (last visited November 26, 2018).

²⁹ Short-Term, Small Dollar Lending: The CFPB’s Assault on Access to Credit and Trampling of State and Tribal Sovereignty: Hearing Before the Subcomm. on Fin. Institutions and Consumer Credit of the H. Comm. on Fin. Services, 114th Cong., 2d Sess., at 38–39 (2016).

³⁰ The Semi-Annual Report of the Bureau of Consumer Financial Protection: Hearing Before the H. Comm. on Fin. Services, 114th Cong., 1st Sess., at 61 (2015).

³¹ David Dayen, “After Boasting About Lowering Black Unemployment, Donald Trump Undermines the Federal Unit Defending Against Housing Discrimination”, The Intercept (Feb. 1, 2018), <https://theintercept.com/2018/02/01/cfpb-mick-mulvaney-lending-housing-discrimination>.

³² Dodd-Frank Wall Street Reform and Consumer Protection Act, H. Rep. 111-517, at 875 (2010) [hereinafter Conference Report].

³³ 12 U.S.C. § 5511(b)(2).

³⁴ § 5493(c)(2)(A).

³⁵ See, e.g., William N. Eskridge, Jr. et al., Cases and Materials on Legislation and Regulation: Statutes and the Creation of Public Policy 1202 (5th ed. 2014); Robert A. Katzmann, Judging Statutes 54 (2014).

³⁶ Conference Report, supra, at 875 (emphasis added).

³⁷ Letter from Sherrod Brown et al., United States Senators and Representatives, to Leandra English, Consumer Financial Protection Bureau, and Mick Mulvaney, Office of Management and Budget (Feb. 16, 2018) [hereinafter Brown et al., OFLEO Letter], <https://www.brown.senate.gov/newsroom/press/release/brown-leads-letter-demanding-answers-on-cfpb-plan-to-strip-office-of-fair-lending>.

³⁸ CFPB, Fair Lending Report of the Consumer Financial Protection Bureau 1 (2017),

https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201704_cfpb_Fair_Lending_Report.pdf.

³⁹ See Renae Merle, “Trump Administration Strips Consumer Watchdog Office of Enforcement Powers in Lending Discrimination Cases”, Wash. Post (Feb. 1, 2018).

⁴⁰ See Press Release, CFPB and DOJ Order Hudson City Savings Bank to Pay \$27 Million to Increase Mortgage Credit Access in Communities Illegally Redlined (Sept. 24, 2015), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-doj-order-hudson-city-savings-bank-to-pay-27-million-to-increase-mortgage-credit-access-in-communities-illegally-redlined>.

⁴¹ Merle, supra.

⁴² See Press Release, CFPB and DOJ Order Ally to Pay \$80 Million to Consumers Harmed by Discriminatory Auto Loan Pricing (Dec. 20, 2013), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-doj-order-ally-to-pay-80-million-to-consumers-harmed-by-discriminatory-auto-loan-pricing>.

⁴³ Brown et al., OFLEO Letter, *supra*.

⁴⁴ Letter from Mick Mulvaney, Office of Management and Budget, to Sherrod Brown, United States Senator, and Maxine Waters, United States Representative (Mar. 1, 2018) (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs).

⁴⁵ Robert O’Harrow Jr., Shawn Boburg, Renae Merle, “Trump Anti-Discrimination Official Once Called Most Hate Crimes Hoaxes”, The Washington Post, (September 26, 2018), 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.

⁴⁶ Robert O’Harrow Jr., Shawn Boburg, Renae Merle, “Trump Anti-Discrimination Official Faces Rebellion at Agency Over Racially Tinged Blog Posts”, The Washington Post, (September 26, 2018), https://www.washingtonpost.com/investigations/trump-anti-discrimination-official-faces-rebellion-at-agency-over-racially-tinged-blog-posts/2018/09/28/ed5b8e6a-c351-11e8-97a5-ab1e46bb3bc7_story.html.

⁴⁷ Letter from Gail Wisely, Jo Battle, Ben Konop and Nelle Rohlich, NTEU Chapter 335, to the Consumer Financial Protection Bureau, (October 29, 2018), (on file with minority staff of the Senate Banking, Housing and Urban Affairs Committee).

⁴⁸ Danielle Douglas-Gabriel, “Mick Mulvaney Takes Aim at Consumer Bureau’s Protection Unit”, The Washington Post, (May 9, 2018), <https://www.washingtonpost.com/news/grade-point/wp/2018/05/09/mick-mulvaney-takes-aim-at-cfpbs-student-protection-unit/>.

⁴⁹ Letter from Senators Brown and Murray, et al. to Mr. Mulvaney (May 18, 2018), <https://www.banking.senate.gov/imo/media/doc/Letter%20to%20English%20and%20Mulvaney%20re%20Office%20for%20Students.pdf>.

⁵⁰ Corey Turner, “Student Loan Watchdog Quits, Says Trump Administration ‘Turned Its Back’ On Borrowers”, NPR, (August 27, 2018), <https://www.npr.org/2018/08/27/642199524/student-loan-watchdog-quits-blames-trump-administration>.

⁵¹ Letter from Seth Frotman, Assistant Director and Student Loan Ombudsman, CFPB, to Mick Mulvaney, (August 27, 2018), <https://apps.npr.org/documents/document.html?id=4784891-Frotman-Letter>.

⁵² *Id.* at 1.

⁵³ Letter from Mick Mulvaney, Office of Management and Budget, to Sherrod Brown, United States Senator, et al., (November 1, 2018), (on file with minority staff of the Senate Committee on Banking, Housing and Urban Affairs).

⁵⁴ § 5491(a).

⁵⁵ See § 5491(c)(3).

⁵⁶ See § 5497(a)(1).

⁵⁷ See § 5497(a)(4)(E).

⁵⁸ See *PHH Corp. v. CFPB*, 881 F.3d 75, 78, 81, 84 (D.C. Cir. 2018) (en banc).

⁵⁹ See The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress: Hearing Before the H. Comm. on Fin. Services, 115th Cong., 2d Sess. (2018) (statement of Mick Mulvaney) (stating that he is paid only one salary).

⁶⁰ See 31 U.S.C. § 501 (establishing OMB as “an office in the Executive Office of the President”); § 502(a) (providing for the Director to administer OMB “[u]nder the direction of the President”).

⁶¹ Donald J. Trump, @realDonaldTrump, Twitter (Dec. 8, 2017 7:18 AM), <https://twitter.com/realdonaldtrump/status/939152197090148352>.

⁶² See Office of Management and Budget, An American Budget: Major Savings and Reforms 189 (Fiscal Year 2019), <https://www.whitehouse.gov/wp-content/uploads/2018/02/msar-fy2019.pdf>.

⁶³ E.g., Rebecca Ballhaus & Peter Nicholas, “Trump Consults on Successors for Chief of Staff John Kelly”, Wall St. J. (June 29, 2018), <https://www.wsj.com/articles/trump-consults-advisers-about-possible-replacement-for-chief-of-staff-john-kelly-1530212632>.

⁶⁴ See Memorandum from Beth F. Cobert, Acting Director, Office of Personnel Management, to Heads of Departments and Agencies, Attachment 1 (Jan. 9, 2017); Notice, 82 Fed. Reg. 49,869 (Oct. 27, 2017); Notice, 82 Fed. Reg. 49,873 (Oct. 27, 2017); Notice, 82 Fed. Reg. 49,871 (Oct. 27, 2017); Notice, 82 Fed. Reg. 59,669 (Dec. 15, 2017); Notice, 83 Fed. Reg. 12,620 (Mar. 22, 2018); Notice, 83 Fed. Reg. 19,340 (May 2, 2018).

⁶⁵ CFPB, List of Detailees and Schedule C Appointees (July 18, 2018) [hereinafter CFPB, Appointees List] (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs).

⁶⁶ See House Committee on Oversight and Government Reform, Policy and Supporting Positions 203 (2012), <https://www.gpo.gov/fdsys/pkg/GPO-PLUMBOOK-2012/pdf/GPO-PLUMBOOK-2012.pdf> (noting that Schedule C appointees “are excepted from the competitive service” and “serve at the pleasure of the appointing authority . . . and may be removed at any time”).

⁶⁷ Kevin Wack, “Mulvaney’s Plan to Embed Political Staffers in CFPB Sparks Backlash”, *Am. Banker* (Dec. 5, 2017), <https://www.americanbanker.com/news/mulvaneys-plan-to-embed-political-staffers-in-cfpb-sparks-backlash>.

⁶⁸ CFPB, Appointees List, *supra*.

⁶⁹ Letter from Mick Mulvaney, Office of Management and Budget, to Sherrod Brown, United States Senator, and Maxine Waters, United States Representative (Mar. 1, 2018) (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs) (stating that the Office’s functions would be transferred into the Director’s office).

⁷⁰ Ryan Rainey, CFPB’s Cost-Benefit Analysis Office to Be Modeled After FTC’s Bureau of Economics, *Morning Consult* (May 10, 2018), <https://morningconsult.com/2018/05/10/cfpbs-cost-benefit-analysis-office-to-be-modeled-after-ftcs-bureau-of-economics> (“Mulvaney said the Office of Cost Benefit Analysis will be housed in the director’s office.”).

⁷¹ See John C. Coates IV, *Cost-Benefit Analysis of Financial Regulation: Case Studies and Implications*, 124 *Yale L.J.* 882, 887 (2015) (describing cost-benefit analysis in financial regulation as entailing “the same kinds of contestable, assumption-sensitive macroeconomic or political modeling used to make monetary policy”).

⁷² See Adam J. Levitin, *The Consumer Financial Protection Bureau: An Introduction*, 32 *Ann. Rev. Banking & Fin. Serv. L.* 321, 339 (2013) (“During the debate over what became the Dodd-Frank Act, consumer advocates urged a more independent agency, fearing industry capture and heavy-handed political interference by Congress and the White House.”).

⁷³ 12 U.S.C. § 5491(b)(5)(B).

⁷⁴ Brief for the Appellees, at 4, *English v. Trump*, No. 18-5007 (D.C. Cir. Feb. 23, 2018).

⁷⁵ Brief of *Amici Curiae* Consumer Financial Regulation Scholars in Support of Plaintiff-Appellant, *English v. Trump*, No. 18-5007 (D.C. Cir. Feb. 6, 2018) [hereinafter *Consumer Financial Regulation Scholars Brief*].

⁷⁶ Brief *Amici Curiae* of Current and Former Members of Congress in Support of Plaintiff-Appellant, *English v. Trump*, No. 18-5007 (D.C. Cir. Feb. 6, 2018).

⁷⁷ 12 U.S.C. § 5491(b)(5)(B).

⁷⁸ See H.R. 4173, 111th Cong. § 4102(b)(6)(B)(1) (engrossed version, Dec. 11, 2009).

⁷⁹ See 31 U.S.C. § 501 (establishing OMB as “an office in the Executive Office of the President”); § 502(a) (providing for the Director to administer OMB “[u]nder the direction of the President”).

⁸⁰ See *The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress: Hearing Before the H. Comm. on Fin. Services, 115th Cong., 2d Sess. (2018)* (statement of Mick Mulvaney) (stating that he is paid only one salary).

⁸¹ 12 U.S.C. § 5491(a).

⁸² See § 5497(a)(4)(A).

⁸³ § 5497(a)(4)(E) (emphasis added).

⁸⁴ Oral Argument at 55:20, *English v. Trump*, No. 18-5007 (D.C. Cir. Apr. 12, 2018).

⁸⁵ *Consumer Financial Regulation Scholars Brief*, *supra*, at 23.

⁸⁶ *Id.* at 1.

⁸⁷ See 5 U.S.C. § 553(b) (establishing notice-and-comment requirements).

⁸⁸ See 12 C.F.R. § 1041.5(b) (requiring the lender to “first make[] a reasonable determination that the consumer will have the ability to repay the loan according to its terms”); See Press Release, CFPB Finalizes Rule to Stop Payday Debt Traps (Oct 5, 2017), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-stop-payday-debt-traps> (describing the rule as “aimed at stopping payday debt traps by requiring lenders to determine upfront whether people can afford to repay their loans”).

⁸⁹ See Press Release, CFPB Finalizes Rule to Stop Payday Debt, *supra*; see also Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 *Fed. Reg.* 54,472, 54,503 (Nov. 17, 2017) [hereinafter *Payday Final Rule*] (“The Bureau’s formal outreach efforts on this subject began in January 2012.”).

⁹⁰ See *Payday Final Rule*, *supra*, 82 *Fed. Reg.* at 54-503–54,519.

⁹¹ CFPB Statement on Payday Rule (Jan. 16, 2018), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-statement-payday-rule>.

⁹² See, e.g., *The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress: Hearing Before the H. Comm. on Fin. Services, 115th Cong., 2d Sess. (2018)* (statement of Mick Mulvaney) (claiming that he has tried to “focus more on the more formal rule making” and characterizing APA rulemaking as “the right way to regulate”).

⁹³ Ian McKendry, “Mulvaney’s First Days at CFPB: Payday, Personnel and a Prank”, Am. Banker (Dec. 4, 2017), <https://www.americanbanker.com/news/cfpbs-mulvaney-backs-congressional-repeal-of-payday-lending-rule>.

⁹⁴ Id.

⁹⁵ See 5 U.S.C. § 801(b)(1) (“A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval, described under section 802, of the rule.”); § 802(c) (allowing thirty Senators to discharge a committee from considering a resolution of disapproval after twenty days of inaction); § 802(f)(1) (providing that if one House receives from the other House a resolution of disapproval, the resolution “shall not be referred to a committee”); § 802(d) (limiting debate in the Senate to ten hours and providing that “[a] motion further to limit debate is in order and not debatable”).

⁹⁶ Complaint, Community Fin. Serv. Ass’n of Am. v. CFPB, No. 1:18-cv-295 (W.D. Tex. Apr. 9, 2018).

⁹⁷ See id. at 38 (requesting “an order and judgment holding unlawful, enjoining, and setting aside the Final Rule”).

⁹⁸ Joint Motion for Stay of Litigation and Stay of Agency Action Pending Review, at 1, Community Fin. Serv. Ass’n of Am. v. CFPB, No. 1:18-cv-295 (W.D. Tex. May 31, 2018).

⁹⁹ Community Fin. Serv. Ass’n of Am. v. CFPB, No. 1:18-cv-295 (W.D. Tex. June 12, 2018) (slip op. at 2).

¹⁰⁰ See Clean Air Council v. Pruitt, 862 F.3d 1, 8–9 (D.C. Cir. 2017) (noting that agencies must comply with notice-and-comment procedures even when reconsidering earlier rules and holding that a ninety-day stay by EPA of its own rules was unauthorized); Open Communities Alliance v. Carson, 286 F. Supp. 3d 148, 162–63 (D.D.C. 2017) (collecting citations for the proposition that delays trigger APA notice-and-comment requirements).

¹⁰¹ See, e.g., 12 U.S.C. §§ 5493(b)(3)(C), (c)(2)(D), (d)(4), 5496(b), 5512(c)(3)(A).

¹⁰² See 15 U.S.C. § 1616(a).

¹⁰³ See 12 U.S.C. § 5493(b)(3)(C).

¹⁰⁴ See § 5496(b)–(c).

¹⁰⁵ CFPB, The Consumer Credit Card Market (2017) [hereinafter CFPB, 2017 Credit Card Report], https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2017.pdf. The CARD Act originally assigned this report to the Fed, but the Wall Street Reform Act transferred this responsibility to the CFPB. Id. at 6.

¹⁰⁶ 15 U.S.C. § 1616(a).

¹⁰⁷ Compare CFPB, 2017 Credit Card Report, supra, with CFPB, The Consumer Credit Card Market 10–11 (2015) [hereinafter CFPB, 2015 Credit Card Report], https://files.consumerfinance.gov/f/201512_cfpb_report-the-consumer-credit-card-market.pdf (noting that “areas of concern” remain and that the “report addresses a number of these”). A well-known law firm that represents financial institutions in consumer finance matters agrees, noting that “the new report does not identify ‘areas of concern’ or ‘areas of interest’ that create risks for consumers.” John L. Culhane, Jr., “CFPB Changes Tone in Third Biennial CARD Act Report”, Ballard Spahr (Jan. 2, 2018), <https://www.consumerfinancemonitor.com/2018/01/02/cfpb-changes-tone-in-third-biennial-card-act-report>.

¹⁰⁸ CFPB, 2015 Credit Card Report, supra, at 10–11.

¹⁰⁹ CFPB, 2017 Credit Card Report, supra, at 64.

¹¹⁰ CFPB, Student Banking: Annual Report to Congress (2016),

https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/2016_cfpb_student_banking_report.pdf.

¹¹¹ See CFPB, College Credit Card Agreements (2018),

https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_college-credit-card-agreements-report_2017.pdf; John L. Culhane, Jr., CFPB Releases Report on College Credit Card Agreements, Ballard Spahr (Jan. 9, 2018), <https://www.consumerfinancemonitor.com/2018/01/09/cfpb-releases-report-on-college-credit-card-agreements>.

¹¹² Letter from Mick Mulvaney, Office of Management and Budget, to Jack Reed, United States Senate (Feb. 7, 2018) (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs).

¹¹³ 12 U.S.C. § 5511(a).

¹¹⁴ See CFPB, Semi-Annual Report, supra, at 5–6.

¹¹⁵ See id. at 20–22.

¹¹⁶ See CFPB, Semi-Annual Report of the Consumer Financial Protection Bureau: October 1, 2016 – March 31, 2017, at 15–41 (2017).

¹¹⁷ § 5496(c)(1).

¹¹⁸ § 5496(c).

¹¹⁹ CFPB, Semi-Annual Report, supra, at 2.

¹²⁰ See CFPB, Semi-Annual Report of the Consumer Financial Protection Bureau: October 1, 2016 – March 31, 2017 (2017).

¹²¹ Id. at 1.

¹²² See § 5492(c). These provisions are necessary because Congress established the CFPB as an independent agency *within* the Federal Reserve System. See § 5492(a). Thus, to ensure the CFPB’s autonomy, Congress deemed it necessary to clarify that the CFPB would not have to run any proposals through another agency: The provision referenced by Mr. Mulvaney simply limits the authority of other government officials and agencies (e.g., the Fed) “to require the Director or any other officer of the Bureau to submit legislative recommendations, or testimony or comments on legislation, to any other officer or agency . . . for approval, comments, or review.” § 5492(c)(4). It is particularly notable that the provision mentions not only the Director, but also other CFPB officials. By Mr. Mulvaney’s logic, the Wall Street Reform Act also contemplates that even low-level CFPB officials will submit independent legislative recommendations. This reading is absurd; Congress cannot have contemplated that every “officer of the Bureau” will submit independent legislative recommendations to Congress. Again, the intent of the provision is simple and clear: to assure the CFPB’s independence from other agencies.

¹²³ Letter from Patrick McHenry et al., Members of Congress, to Richard Cordray, Director, Consumer Financial Protection Bureau (Aug. 22, 2016) (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs).

¹²⁴ Letter from Patrick McHenry et al., Members of Congress, to Richard Cordray, Director, Consumer Financial Protection Bureau (June 17, 2015) (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs).

¹²⁵ See Letter from Steve Strivers et al., Members of Congress, to Richard Cordray, Director, Consumer Financial Protection Bureau (Feb. 3, 2015) (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs) (urging that regulations be based on “transparent research and data”); Letter from Alcee L. Hastings et al., Members of Congress, to Richard Cordray, Consumer Financial Protection Bureau (July 31, 2015) (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs) (asking for “a fair and transparent process”).

¹²⁶ See Mick Mulvaney, Questions for the Record for Richard Cordray, Director, Consumer Financial Protection Bureau, Hearing Date: January 28, 2014 (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs) (citing a Bipartisan Policy Center report as raising “several concerns with the CFPB’s transparency efforts”); Letter from Patrick McHenry et al., Members of Congress, to Richard Cordray, Director, Consumer Financial Protection Bureau (Aug. 5, 2013) (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs) (“This is hardly the manner in which an agency dedicated to fact-driven, open, and transparent, supervision of covered industries should operate.”).

¹²⁷ The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress: Hearing Before the H. Comm. on Fin. Services, 115th Cong., 2d Sess. (2018) (statement of Mick Mulvaney).

¹²⁸ The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress: Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs, 115th Cong., 2d Sess. (2018) (statement of Sen. Brown).

¹²⁹ *Id.* (statement of Mick Mulvaney)

¹³⁰ *Id.* (statement of Mick Mulvaney)

¹³¹ See Loan Products, CashCall, <https://www.cashcall.com/rates> (last visited July 18, 2018).

¹³² Glenn Thrush, “‘Like a Mosquito in a Nudist Colony’: How Mick Mulvaney Found Plenty to Target at Consumer Bureau”, N.Y. Times (May 7, 2018), <https://www.nytimes.com/2018/05/07/us/mick-mulvaney-budget-director-consumer-bureau.html>.

¹³³ *Id.*

¹³⁴ See Letter from Joseph L. Barloon, Skadden, Arps, Slate, Meagher & Flom LLP, to Sherrod Brown, United States Senator (May 30, 2018) (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs).

¹³⁵ Letter from Elizabeth Warren et al., United States Senate, to Leandra English, Consumer Financial Protection Bureau, and Mick Mulvaney, Office of Management and Budget (Jan. 31, 2018) (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs).

¹³⁶ *Id.* at 3.

¹³⁷ Letter from Mick Mulvaney, Office of Management and Budget, to Elizabeth Warren, United States Senate (Feb. 15, 2018) (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs).

¹³⁸ Letter from Elizabeth Warren, United States Senate, to Leandra English, Consumer Financial Protection Bureau, and Mick Mulvaney, Office of Management and Budget (Jan. 4, 2018) (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs).

¹³⁹ Letter from Mick Mulvaney, Office of Management and Budget, to Elizabeth Warren, United States Senate (Jan. 18, 2018) (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs).

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- ¹⁴⁰ Letter from Elizabeth Warren and Sherrod Brown, United States Senate, to Mick Mulvaney, Office of Management and Budget (Dec. 1, 2017) (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs).
- ¹⁴¹ Letter from Mick Mulvaney, Office of Management and Budget, to Elizabeth Warren and Sherrod Brown, United States Senate (Dec. 7, 2017) (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs).
- ¹⁴² Letter from Mick Mulvaney, Office of Management and Budget, to Sherrod Brown, United States Senate, and Maxine Waters, United States House of Representatives (Mar. 1, 2018) (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs).
- ¹⁴³ Letter from Mick Mulvaney, Office of Management and Budget, to Jack Reed, United States Senate (Jan. 19, 2018) (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs).
- ¹⁴⁴ See Letter from Mick Mulvaney, Office of Management and Budget, to Sherrod Brown, United States Senator (Mar. 23, 2018) (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs); (pasting text from one of Equifax’s public filings).
- ¹⁴⁵ Letter from Elizabeth Warren, United States Senate, to Mick Mulvaney, Office of Management and Budget (Mar. 16, 2018) (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs).
- ¹⁴⁶ See 5 U.S.C. § 552.
- ¹⁴⁷ See § 552(a)(4)(A)(ii)(II); 12 C.F.R. § 1072.22(c)(2)–(3).
- ¹⁴⁸ See Letter from Raynell D. Lazier, FOIA Manager, CFPB, to Karl Frisch, Allied Progress (Nov. 21, 2017) (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs).
- ¹⁴⁹ See Letter from Raynell D. Lazier, FOIA Manager, CFPB, to Karl Frisch, Allied Progress (Jan. 16, 2018) (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs); Letter from Raynell D. Lazier, FOIA Manager, CFPB, to Karl Frisch, Allied Progress (Feb. 6, 2018) (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs); Letter from Raynell D. Lazier, FOIA Manager, CFPB, to Karl Frisch, Allied Progress (Jan. 25, 2018) (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs); Letter from Raynell D. Lazier, FOIA Manager, CFPB, to Karl Frisch, Allied Progress (Feb. 26, 2018) (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs) [hereinafter Lazier, Feb. 26 Letter].
- ¹⁵⁰ Lazier, Feb. 26 Letter, *supra*.
- ¹⁵¹ CFPB, Annual FOIA Report: Fiscal Year 2017, at 30 (2018) [hereinafter CFPB, Annual FOIA Report 2017], https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_fy2017-foia-annual-report.pdf.
- ¹⁵² See Letter from Steven Y. Bressler, Assistant General Counsel for Litigation & Oversight, CFPB, to David L. Sobel (Apr. 23, 2018) (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs) [hereinafter Bressler, Final Determination].
- ¹⁵³ See Letter from David L. Sobel, Attorney-at-Law, to Raynell D. Lazier, FOIA Manager, CFPB (Mar. 23, 2018) (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs); Letter from David L. Sobel, Attorney-at-Law, to Chief FOIA Officer, CFPB (Mar. 23, 2018) (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs) [hereinafter Sobel, Appeal Letter].
- ¹⁵⁴ Compare Sobel, Appeal Letter, *supra*, with Bressler, Final Determination, *supra*.
- ¹⁵⁵ See 5 U.S.C. § 552(a)(6)(A)(ii).
- ¹⁵⁶ CFPB, Annual FOIA Report 2017, *supra*, at 18.
- ¹⁵⁷ Consumer Complaint Database, CFPB (last updated July 16, 2018), https://www.consumerfinance.gov/data-research/consumer-complaints/search/?from=0&searchField=all&searchText=&size=25&sort=created_date_desc.
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- ¹⁵⁹ Chris Arnold, “The Consumer Complaints Database that Could Disappear from View”, NPR (Apr. 25, 2018), <https://www.npr.org/2018/04/25/605835307/the-consumer-complaints-database-that-could-disappear-from-view>.
- ¹⁶⁰ Consumer Complaint Database, CFPB, https://www.consumerfinance.gov/data-research/consumer-complaints/search/?from=0&searchField=all&searchText=&size=25&sort=created_date_desc (last updated July 24, 2018).
- ¹⁶¹ H.R. 5491, 114th Cong., 2d Sess. (2016).
- ¹⁶² Consumer Complaint Database, CFPB, *supra*.
- ¹⁶³ Office of Management and Budget, An American Budget: Major Savings and Reforms 189 (Fiscal Year 2019), <https://www.whitehouse.gov/wp-content/uploads/2018/02/msar-fy2019.pdf>.
- ¹⁶⁴ Mulvaney, Last Envelope, *supra*.

¹⁶⁵ CFPB, Strategic Plan FY 2018 – FY 2022, *supra*, at 8.

¹⁶⁶ *Id.* at 9.

¹⁶⁷ *Id.* at 11.

¹⁶⁸ See CFPB, Call for Evidence [hereinafter CFPB, Call for Evidence], <https://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/open-notices/call-for-evidence> (last updated Apr. 17, 2018).

¹⁶⁹ See, e.g., Mulvaney, Last Envelope, *supra*.

¹⁷⁰ See Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z), 78 Fed. Reg. 6,408, 6,555–75 (Jan. 30, 2013).

¹⁷¹ CFPB, Arbitration Study (2015), https://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf.

¹⁷² See Arbitration Agreements, 82 Fed. Reg. 33,210, 33,390–418 (July 19, 2017).

¹⁷³ See, e.g., CFPB, Testing for Bankruptcy Periodic Statement Forms for Mortgage Servicing (2016), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/CFPB_Bankruptcy_Report_FINAL_2_29_16.pdf.

¹⁷⁴ See CFPB, Strategic Plan FY 2018 – FY 2022, *supra*, at 15.

¹⁷⁵ CFPB, Consumer Financial Protection Bureau Strategic Plan: FY 2013 – FY 2017, at 26 (2013), <https://s3.amazonaws.com/files.consumerfinance.gov/f/strategic-plan.pdf>.

¹⁷⁶ Press Release, Acting Director Mulvaney Announces Call for Evidence Regarding Consumer Financial Protection Bureau Functions (Jan. 17, 2018), <https://www.consumerfinance.gov/about-us/newsroom/acting-director-mulvaney-announces-call-evidence-regarding-consumer-financial-protection-bureau-functions>.

¹⁷⁷ See *id.*

¹⁷⁸ Request for Information Regarding Bureau Civil Investigative Demands and Associated Processes, 83 Fed. Reg. 3,686, 3,686 (Jan. 26, 2018) [hereinafter CID RFI].

¹⁷⁹ Enforcing Consumer Protections by Gathering Information for Investigations, CFPB (Sept. 21, 2012), <https://www.consumerfinance.gov/about-us/blog/enforcing-consumer-protections-by-gathering-information-for-investigations>.

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¹⁸¹ CID RFI, *supra*, at 3,686.

¹⁸² *Id.* at 3,686–87.

¹⁸³ *Id.* at 3,687.

¹⁸⁴ See Letter from Financial Services Roundtable et al. to Monica Jackson, Office of the Executive Secretary, CFPB (Apr. 26, 2018), <https://www.regulations.gov/contentStreamer?documentId=CFPB-2018-0001-0092&attachmentNumber=2&contentType=pdf>.

¹⁸⁵ See *id.* at 2 n.7; Press Release, CFPB Sues Nation’s Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment (Jan. 18, 2017) [hereinafter Navient Press Release], <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-nations-largest-student-loan-company-navient-failing-borrowers-every-stage-repayment>; Press Release, CFPB Takes Action Against Wells Fargo for Illegal Student Loan Servicing Practices (Aug. 22, 2016) [hereinafter Wells Fargo Press Release], <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-wells-fargo-illegal-student-loan-servicing-practices>.

¹⁸⁶ Navient Press Release, *supra*.

¹⁸⁷ Wells Fargo Press Release, *supra*.

¹⁸⁸ See Letter from Richard Cordray, Director, Consumer Financial Protection Bureau, to Jeb Hensarling, Chairman, House Committee on Financial Services (June 14, 2017) (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs).

¹⁸⁹ Request for Information Regarding Bureau Enforcement Processes, 83 Fed. Reg. 5,999, 5,999 (Feb. 12, 2018) [hereinafter Enforcement RFI]; Request for Information Regarding the Bureau’s Supervision Program, 83 Fed. Reg. 7,166, 7,167 (Feb. 20, 2018) [hereinafter Supervision RFI].

¹⁹⁰ See Enforcement RFI, *supra*, 83 Fed. Reg. at 6,000 (requesting feedback on “[t]he length of Bureau investigations”).

¹⁹¹ See *id.* (requesting feedback on “[t]he calculation of civil money penalties”).

¹⁹² See *id.* (requesting feedback on “[t]he standard provisions in Bureau consent orders”).

¹⁹³ See Supervision RFI, *supra*, 83 Fed. Reg. at 7,167.

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Jackson, Office of the Executive Secretary, CFPB (May 21, 2018), <https://www.regulations.gov/contentStreamer?documentId=CFPB-2018-0003-0409&attachmentNumber=2&contentType=pdf>.

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¹⁹⁷ See, e.g., Coates, *supra*, at 887; Jeffrey N. Gordon, The Empty Call for Benefit-Cost Analysis in Financial Regulation, 43 J. Legal Stud. S351, S352 (2014).

¹⁹⁸ Coates, *supra*, at 887.

¹⁹⁹ Gordon, *supra*, at S352.

²⁰⁰ CFPB Statement on Payday Rule (Jan. 16, 2018), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-statement-payday-rule>.

²⁰¹ CFPB Issues Public Statement on Home Mortgage Disclosure Act Compliance (Dec. 21, 2017), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-public-statement-home-mortgage-disclosure-act-compliance>.

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²⁰⁵ Responsible Business Conduct: Self-Policing, Self-Reporting, Remediation, and Cooperation, CFPB Bulletin 2013-06 (June 25, 2013), https://files.consumerfinance.gov/f/201306_cfpb_bulletin_responsible-conduct.pdf.

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²¹⁴ Kevin Wack, “Mulvaney’s Plan to Embed Political Staffers in CFPB Sparks Backlash”, Am. Banker (Dec. 5, 2017), <https://www.americanbanker.com/news/mulvaney-s-plan-to-embed-political-staffers-in-cfpb-sparks-backlash>.

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²¹⁶ See Kathy Kraninger, Response to Questions for the Record from Senators Sherrod Brown and Elizabeth Warren, Hearing Date: July 19, 2018 (on file with the minority staff of the Senate Committee on Banking, Housing, and Urban Affairs) (“Based on the information that is available to me at this time, I cannot identify any actions that Acting Director Mulvaney has taken with which I disagree.”).