

January 4, 2018

Ms. Leandra English
Acting Director
The Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

The Honorable Mick Mulvaney
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Acting Director English and Director Mulvaney,

I write to express concern that Director Mulvaney has shut down core functions of the Consumer Financial Protection Bureau (CFPB) based on unjustified concerns about data security at the agency.

On December 4, Director Mulvaney announced that he was freezing the collection of all personal information by the CFPB after reviewing two reports by the Inspector General (IG) on the CFPB's information security controls.¹ Like Director Mulvaney, I take "data security very, very seriously"² and share his conviction that institutions – whether government agencies or private companies – must be responsible stewards of the sensitive consumer data they hold. However, after reviewing the reports, their recommendations, and CFPB's response, I believe Director Mulvaney's actions are unjustified and that he inappropriately used the reports as a pretext to halt and weaken critical agency functions.

CFPB cannot fulfill its core functions without collecting personally identifiable information. When a consumer submits a complaint, the CFPB asks for information such as their name and account number to enable the agency to help resolve the dispute. CFPB bank examiners and enforcement lawyers regularly use account level data provided by regulated institutions to detect improper and unlawful activity. Likewise, the Office of Fair Lending collects and analyzes data to bring lawsuits against financial institutions that discriminate against their customers.

Given how integral these data are to these basic CFPB functions, I fear that the freeze in data collection has in practice fundamentally changed how the CFPB interacts with its regulated

¹ The Wall Street Journal, New CFPB Chief Curbs Data Collection, Citing Cybersecurity Worries (Dec. 4, 2017) <https://www.wsj.com/articles/new-cfpb-chief-curbs-data-collection-citing-cybersecurity-worries-1512429736>

² *Id.*

entities, particularly in the Division of Supervision, Enforcement and Fair Lending. My staff has obtained internal CFPB documents that confirm these fears.

Director Mulvaney's Freeze of CFPB Examiner Information Requests

On December 4, 2017, CFPB Assistant Director for Supervision Examinations Paul Sanford sent an email to all bank examiners in response to Director Mulvaney's announcement, which directed them to refrain from sending "any supervised entity any type of information request, whether as part of an initial request, a supplemental or follow-up request, or a monitoring request," "until we issue additional guidance."³ Later in the email, Assistant Director Sanford previewed that in the longer term examiners would be instructed to "request [that] entities collect [any consumer or account-level] information and prepare it for review by the Bureau" and "instruct institutions to hold that information, rather than producing it to the Bureau."⁴ The e-mail indicated no deadline for providing such guidance.

A typical CFPB examination involves several steps. At least sixty days in advance of their onsite work, examiners request information from the financial institution such as audit reports, internal policies, and recent data to help them understand the institution's existing procedures and identify risks.⁵ Armed with an understanding of how the financial institution is supposed to operate, the examiners then conduct a targeted onsite examination, observing employees, interviewing key staff, and reviewing additional data. CFPB examiners sometimes continue their analysis offsite. This activity is similar to the authorities and procedures of other financial regulators, such as the Federal Reserve Board of Governors.⁶

Assistant Director Sanford's instruction to CFPB staff has undermined the agency's work in both the short term and long term. In the short term, it halted all examination activity, with no clear timeline on when guidance would be issued that would allow these activities to be restarted. Examinations are among CFPB's most powerful tools to keep consumers safe. Hundreds of specially trained and commissioned CFPB banks examiners conduct investigations all over the country, which allow them to understand potential risks to consumers from different products and to ensure that the institutions are following state and Federal consumer protection laws. Examinations are data-driven and granular – if examiners aren't able to request information from the relevant financial institution, they can't do their job.

In the longer term, the arrangement described in the Sanford email - one in which examiners can only access information while onsite at a regulated entity and cannot load any data onto the

³ Email from Paul Sanford to CFPB Examiners, Dec. 4, 2017, 7:52 AM.

⁴ *Id.*

⁵ The Consumer Financial Protection Bureau, Supervision and Examination Manual, https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201708_cfpb_supervision-and-examination-manual.pdf

⁶ The Federal Reserve Board of Governors, The Bank Holding Company Supervision Manual, <https://www.federalreserve.gov/publications/files/1000.pdf>

CFPB system -- threatens to seriously hamper the pace and effectiveness of future examinations, and is already having a significant impact on the flow of information to CFPB examiners.⁷

Director Mulvaney's proposed changes appear to prohibit examiners from getting information ahead of the onsite examination or conducting analysis afterwards. Like lawyers who enter a courtroom without having reviewed their case, CFPB examiners who are unable to prepare and scope their examinations will have a hard time identifying what information is relevant. As a result, examinations will last longer, not only increasing the costs and disruption at the financial institution,⁸ but also reducing the number of institutions CFPB can examine in a year.

Examinations make American families safer. In just the last year, they've resulted in public enforcement actions against two different mortgage servicers that kept borrowers in the dark about the process for applying for foreclosure relief,⁹ three big credit reporting agencies that deceived consumers about credit score products they sold,¹¹ a real estate agency and a settlement company that hatched an illegal kickback scheme to enrich themselves at the expense of their customers,¹² a mortgage originator that regularly reported false information to the CFPB under the Home Mortgage Disclosure Act,¹³ and a lender that attracted borrowers through deceptive advertisements and then withdrew funds from their accounts without authorization.¹⁴ In addition, more than \$15 million was returned to more than 100,000 consumers as a result of the non-public resolution of violations of consumer protection laws within the supervision process.¹⁵ In short, if the CFPB conducts fewer and less effective examinations, consumers will suffer.

Director Mulvaney's Ban on CFPB Attorneys' Review of Evidence

My staff has been told by several sources that enforcement lawyers at the CFPB have been banned from reviewing electronic evidence they obtain in discovery. While the regulated entities are still required to produce records to the CFPB, that information is reportedly not being loaded

⁷ Ballard Spahr Consumer Finance Monitor, CFPB data collection freeze impacting CFPB examinations (Dec. 15, 2017) <https://www.consumerfinance.com/2017/12/15/cfpb-data-collection-freeze-impacting-cfpb-examinations/>.

⁸ Ballard Spahr Consumer Finance Monitor, CFPB data collection freeze impacting CFPB examinations (Dec. 15, 2017) <https://www.consumerfinance.com/2017/12/15/cfpb-data-collection-freeze-impacting-cfpb-examinations/>.

⁹ Consumer Financial Protection Bureau, Supervisory Highlights (Spring 2017) https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201704_cfpb_Supervisory-Highlights_Issue-15.pdf

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Consumer Financial Protection Bureau, Supervisory Highlights (Summer 2017) https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201709_cfpb_Supervisory-Highlights_Issue-16.pdf

¹⁴ Consumer Financial Protection Bureau, Supervisory Highlights (Spring 2017) https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201704_cfpb_Supervisory-Highlights_Issue-15.pdf

¹⁵ Consumer Financial Protection Bureau, Supervisory Highlights (Summer 2017) https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201709_cfpb_Supervisory-Highlights_Issue-16.pdf

onto CFPB systems, preventing the enforcement team from completing investigations and bringing cases.

There is No Basis for Director Mulvaney's Orders

Dodd-Frank mandates that the CFPB examine financial institutions¹⁶ and bring lawsuits to enforce federal consumer financial laws.¹⁷ Director Mulvaney claims that the cybersecurity issues at the agency are so serious that it justifies ignoring congressional mandates, but the IG reports on which he bases his claims demonstrate that the agency's cybersecurity policies are robust and any problems with them are not nearly serious enough to support the action Director Mulvaney has taken.

According to a recent IG report, CFPB's information security program is "operating at a level-3 [policies, procedures, and strategy are consistently implemented, but quantitative and qualitative effectiveness measures are lacking] maturity, with the agency performing several activities indicative of a higher maturity level."¹⁸ CFPB leadership developed an implementation plan to address any shortcomings,¹⁹ and the IG did not recommend shutting down any activities at the agency.²⁰

For perspective, according to the most-recent government-wide report, CFPB out-performed the Federal Reserve Board of Governors,²¹ the Federal Deposit Insurance Corporation,²² and the Securities and Exchange Commission²³ on the quality of its cybersecurity practices. These agencies all perform similar supervisory or enforcement functions to the CFPB, which have continued despite the reports.

Furthermore, the Department of the Treasury, which includes the Office of the Comptroller of the Currency and until recently administered CFPB's computer system, is operating at a level -1 [policies, procedures, and strategy are not formalized; activities are performed in an ad-hoc, reactive manner] in two categories, at a level-2 [policies, procedures, and strategy are formalized

¹⁶ 12 USC §§5514—16.

¹⁷ 12 USC §5514(c); 12 USC §5515(c); 15 USC §5516(d).

¹⁸ Office of Inspector General for the Board of Governors of the Federal Reserve System and the Consumer Financial Protection Bureau, 2017 Audit of the CFPB's Information Security Program (Oct. 31, 2017) <https://oig.federalreserve.gov/reports/cfpb-information-security-program-oct2017.pdf>.

¹⁹ *Id.*

²⁰ Office of Inspector General Board of Governors of the Federal Reserve System and the Consumer Financial Protection Bureau, 2017 Audit of the CFPB's Information Security Program (Oct. 31, 2017) <https://oig.federalreserve.gov/reports/cfpb-information-security-program-oct2017.pdf>.

²¹ Office of Management and Budget, Federal Information Security Modernization Act of 2014 Annual Report to Congress (March 10, 2017)

https://www.hhs.gov/sites/default/files/fy_2016_fisma_report%20to_congress_official_release_march_10_2017.pdf

²² Federal Deposit Insurance Corporation Office of Inspector General, Audit of the FDIC's Information Security Program 2017 (Oct. 2017), <https://www.fdicigo.gov/publications/audit-fdic%E2%80%99s-information-security-program%E2%80%942017>.

²³ U.S. Securities and Exchange Commission Office of Inspector General, Audit of the SEC's Compliance With the Federal Information Security Modernization Act for Fiscal Year 2016 (Mar. 7, 2017)

<https://www.sec.gov/files/Audit-of-the-SECs-Compliance-with-the-Federal-Information-Security-Modernization-Act-for-Fiscal-Year-2016.pdf>.

and documented but not consistently implemented] in two more, and at a level-3 on the remaining test.²⁴

In September, the Inspector General released another report recommending that CFPB better limit access to certain confidential information within the agency to employees with a legitimate business need.²⁵ These recommendations are based on a review the Inspector General did mainly in 2013 and 2014.²⁶ The CFPB has significantly improved its relevant practices since then, proactively implementing many of the recommendations in the report and pledging to implement the remainder.²⁷ In any case, the IG did not recommend halting the collection of data as a result of his findings.²⁸

Questions

This fact pattern indicates actions taken by Director Mulvaney were not necessary to address cybersecurity problems at CFPB. Instead, Director Mulvaney's actions appear to be aimed at hobbling the agency by inappropriately using the IG reports as a pretext.

To provide greater clarity on these decisions, please respond to these questions no later than January 19, 2018. In addition, my staff requests a briefing on this topic be scheduled no later than January 12, 2018.

1. Prior to November 24, what were CFPB's plans to address the recommendations provided by its Inspector General in its FISMA report? Why did you make additional changes to these plans?
 - a. Why did you believe these measures were insufficient?
 - b. What steps did you take to evaluate additional options?
 - c. Which cybersecurity experts were consulted?
 - d. Which CFPB staff members were consulted?
 - e. Were any member of the Inspector General's staff consulted? If so, which ones?

2. What specific changes in examination procedures related to cybersecurity were implemented in the Division of Supervision, Enforcement and Fair Lending program in the aftermath of the December 4th announcement, and what were the impacts of these changes?
 - a. Please provide copies of any guidance given to supervision staff about changes in examination procedures.

²⁴ Office of Management and Budget, Federal Information Security Modernization Act of 2014 Annual Report to Congress (March 10, 2017)

https://www.hhs.gov/sites/default/files/fy_2016_fisma_report%20to_congress_official_release_march_10_2017.pdf

²⁵ Office of Inspector General for the Board of Governors of the Federal Reserve System and the Consumer Financial Protection Bureau, The CFPB Can Improve Its Examination Workpaper Documentation Practices (Sep. 27, 2017), <https://oig.federalreserve.gov/reports/cfpb-examination-workpaper-documentation-sep2017.pdf>.


²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

- b. Please describe any changes to procedures for obtaining and reviewing records in discovery precipitated by Mulvaney's December 4 announcement.
 - c. Please provide copies of any communications with regulated entities related to providing personally identifiable information to bank examiners and enforcement lawyers.
 - d. Please provide copies of all emails sent or received by Mick Mulvaney, Brian Johnson, Eric Blankenstein, Christopher D'Angelo, Patrice Ficklin, Paul Sanford, Peggy Twohig, Kristen Donoghue, Sartaj Alag, or Jerry Horton about policies related to the acquisition of personally identifiable information from November 24 to present.
 - e. Did you evaluate the impact of the new procedures on CFPB supervision and enforcement activities prior to ordering and implementing them? If so, what did this evaluation show?
3. Were any Bureau functions outside the Division of Supervision, Enforcement and Fair Lending impacted?
- a. Are there any plans to alter the consumer complaint process?
 - b. Are there any plans to alter how the Research, Markets, and Regulation division obtains or uses consumer data?
 - c. Are there any plans to alter internal operations in the CFPB with respect to how the agency uses or deploys employees' personally identifiable information?

Sincerely,



Elizabeth Warren
United States Senator