Congress of the United States
Washington, DC 20515

February 16, 2018

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

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

Dear Ms. English and Mr. Mulvaney:

Just ten years after a financial crisis that destroyed trillions of dollars in housing wealth and devastated traditionally underserved communities targeted by predatory lenders, we are troubled by reports that the Consumer Financial Protection Bureau (CFPB or Bureau) intends to reorganize the Office of Fair Lending and Equal Opportunity (OFLEO or Office) and strip the Office of its enforcement and supervisory role.[1] We are concerned that in taking these actions, you will frustrate the CFPB's efforts to ensure all "consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination."[2]

As you know, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 directed the Bureau to create the OFLEO with duties including "providing oversight and enforcement of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities that are enforced by the Bureau."[3] Congress created OFLEO, in large part, to empower it with the tools to combat predatory mortgage lending practices targeted at racial and ethnic minorities and traditionally underserved communities that fueled a mass foreclosure crisis, and severely worsened inequality across racial and ethnic lines by destroying almost half the wealth in Black and Latino communities during the financial crisis.[4]

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[1] https://theintercept.com/2018/02/01/cfpb-mick-mulvaney-lending-housing-discrimination/
[2] Dodd-Frank Act § 1021(b)(2)
[3] Dodd-Frank Act § 1013(c)(2)(A)
[4] See: https://www.reuters.com/article/us-usa-foreclosures-race/racial-predatory-loans-fueled-u-s-housing-crisis-study-idUSTRE6930K520101004 and http://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-great-recession/

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Laws that prohibit discrimination in consumer financial markets, like other consumer protection laws, were not prioritized by regulators before the financial crisis. As a result, financial institutions were able to sell consumers dangerous products that fueled the Great Recession. While Mr. Mulvaney once blamed the predatory lending occurring in the mid-2000s on CFPB inaction – notwithstanding the fact that the Bureau did not even exist until 2011[5] – that economic disaster was the result of the same regulatory indifference he is displaying today.

Under prior leadership, CFPB staff were vigilant in protecting racial, ethnic, and other minorities from discrimination by unscrupulous lenders. From its inception through 2016, CFPB had obtained over $400 million for harmed consumers in fair lending supervisory and enforcement actions.[6] OFLEO played a pivotal role in these actions. For example, the Office led the CFPB's 2015 case against Hudson City Savings Bank for discriminatory redlining practices that denied residents in communities of color access to mortgage loans.[7] In 2013, the Office led the CFPB's case against Ally Financial for systematically charging racial and ethnic minorities higher interest rates on their car loans.[8] These two actions collectively resulted in orders of more than $130 million for consumers, with the latter being the largest-ever settlement in an auto loan discrimination case.[9] OFLEO's record makes it clear that the Office has played an important role in fighting discrimination– just as Congress intended.

While the details of the reorganization have not been fully disclosed, it will undoubtedly hinder this important work. In his letter to staff announcing the reorganization, Director Mulvaney wrote "[t]he Fair Lending Office will continue to focus on advocacy, coordination, and education, while its current supervision and enforcement functions will remain in SEFL." That represents a significant departure from the status quo. Over the last six and a half years, OFLEO helped design specialized oversight and supported bank examiners in assuring that CFPB's regulated institutions were complying with anti-discrimination laws. When the entities were unable to resolve problems identified in the examinations, OFLEO staff worked with the CFPB's enforcement lawyers and the Department of Justice to bring lawsuits. OFLEO also counseled banks in their efforts to build good compliance systems. Of those functions, only the counseling will be supplied after the reorganization, though in the absence of dedicated anti-discrimination enforcement, it's not clear whether there will be continuing demand.

The possibility that the CFPB might stray from carrying out its responsibilities to enforce fair lending laws is especially worrisome in light of proposed legislation that would open the door to increased discrimination in mortgage lending. Section 104 of Senator Crapo's "Economic Growth, Regulatory Relief, and Consumer Protection Act," as well as H.R. 2954, the "Home Mortgage Disclosure Adjustment Act," would exempt 85% of depositories already reporting data

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[5] https://mobile.twitter.com/civilrightsorg/status/781613141755097088

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

[7] https://www.washingtonpost.com/news/business/wp/2018/02/01/trump-administration-strips-consumer-watchdog-office-of-enforcement-powers-against-financial-firms-in-lending-discrimination-cases.

[8] *Id.*

[9] https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-doj-order-ally-to-pay-80-million-to-consumers-harmed-by-discriminatory-auto-loan-pricing.

from the Home Mortgage Disclosure Act (HMDA)'s reporting requirements, undermining the CFPB's ability to spot racial discrimination in these markets.[10] The analysis of HMDA data has resulted in the discovery of brazen patterns of discrimination. Two studies, for example, used HMDA data to find that Blacks and Latinos were, even after controlling for other factors, more likely than Whites to receive subprime loans.[11] Predatory subprime mortgage lending played a significant role in the financial crisis, causing scores of Americans to lose their homes.[12] The financial crisis had an especially harmful impact on persons of color, which studies have attributed in part to racial discrimination in the subprime market.[13] If this legislation passes, regulators and other watchdogs will lose critical information used to police the mortgage market, and it will become even more important for OFLEO to keep a vigilant eye on discrimination.

In responding to our letter, please provide written responses by no later than March 1st to the following questions:

1. Did the CFPB perform a legal analysis to determine whether stripping the OFLEO 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?

2. How will bringing the OFLEO under the control of the Office of the Director modify the Bureau's decision-making process with regard to enforcement and other actions to protect consumers from unfair discrimination?
    a. What, if any, continuing role will the OFLEO play in supporting the Bureau's enforcement of fair lending laws?
    b. How will the reorganization affect the reporting duties for OFLEO employees, including the OFLEO Assistant Director?
    c. After the reorganization, which officials in the Office of the Director will be consulted about OFLEO activities? Which of these officials have been hired, politically appointed, or detailed to the CFPB since November 24, 2017?
    d. After the reorganization, which political appointees and temporarily-detailed employees will be granted veto power over OFLEO activities and decisions?
    e. What criteria will political appointees and temporarily-detailed employees in the Office of the Director use to determine whether the Bureau will follow the recommendations of career policy experts in the OFLEO?
    f. What actions will the Bureau take to ensure that OFLEO decisions continue to be based on the best advice of independent, expert, career policy staff?
    g. How will new requirements that the OFLEO report to the Office of the Director enhance the CFPB's ability to protect consumers from unfair discrimination?

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[10] http://files.consumerfinance.gov/f/201510_cfpb_final-rule_home-mortgage-disclosure_regulation-c.pdf

[11] See: http://www.tandfonline.com/doi/abs/10.1080/10511482.2013.771788 and http://www.nber.org/papers/w22004.pdf.

[12] http://www.hsgac.senate.gov/download/report-psi-staff-report-wall-street-and-the-financial-crisis-anatomy-of-a-financial-collapse.

[13] https://www.aclu.org/files/field_document/discrimlend_final.pdf.

3. Please describe any independent analyses, such as third-party studies, that informed the decision to bring the OFLEO under the Office of the Director and strip OFLEO of its enforcement and supervisory authority.

4. Did Mr. Mulvaney or any other CFPB employee consult with or discuss this reorganization with any outside entities – including lobbyists or representatives of the banking or financial services industry – prior to announcing the reorganization?

5. Did Mr. Mulvaney consult with other officials, employees, or political appointees at OMB or the White House about the OFLEO reorganization prior to its announcement?

6. Is the CFPB considering any substantive changes to its approach to the enforcement of fair lending laws, including changes to the CFPB's interpretation of these laws?

In addition, please provide a copy of all documents and communications relating to the decision to bring the OFLEO under the control of the Office of the Director, and strip OFLEO of its enforcement and oversight responsibilities.

Thank you for your attention to these matters.

Sincerely,

Sherrod Brown
United States Senator

Maxine Waters
United States Representative

Robert Menendez
United States Senator

Elijah E. Cummings
United States Representative

Elizabeth Warren
United States Senator

Michael Capuano
United States Representative

Emanuel Cleaver, II
United States Representative

Charlie Crist
United States Representative

Keith Ellison
United States Representative

Vicente Gonzalez
United States Representative

Al Green
United States Representative

Raúl M. Grijalva
United States Representative

Luis V. Gutiérrez
United States Representative

Denny Heck
United States Representative

Pramila Jayapal
United States Representative

Kirsten Gillibrand
United States Senator

Mazie K. Hirono
United States Senator

Patty Murray
United States Senator

Catherine Cortez Masto
United States Senator

Richard Blumenthal
United States Senator

Cory A. Booker
United States Senator

Chris Van Hollen
United States Senator

Edward J. Markey
United States Senator

Brian Schatz
United States Senator

Kamala D. Harris
United States Senator

Marcy Kaptur
United States Representative

Ro Khanna
United States Representative

Barbara Lee
United States Representative

Alan Lowenthal
United States Representative

Stephen F. Lynch
United States Representative

Carolyn B. Maloney
United States Representative

James P. McGovern
United States Representative

Gregory Meeks
United States Representative

Eleanor Holmes Norton
United States Delegate

Mark Pocan
United States Representative

Tammy Baldwin
United States Senator

Bernard Sanders
United States Senator

Jeffrey A. Merkley
United States Senator

Ron Wyden
United States Senator

Jack Reed
United States Senator

Dianne Feinstein
United States Senator

Amy Klobuchar
United States Senator

Tammy Duckworth
United States Senator

Sheldon Whitehouse
United States Senator

Jamie Raskin
United States Representative

Jan Schakowsky
United States Representative

Brad Sherman
United States Representative

Louise M. Slaughter
United States Representative

Mark Takano
United States Representative

Nydia M. Velázquez
United States Representative

Tulsi Gabbard
United States Representative

James A. Himes
United States Representative

John Garamendi
United States Representative