

Senator Elizabeth Warren
Questions for the Record
“The Consumer Financial Protection Bureau’s Semi-Annual Report to Congress”
April 19, 2018

Questions for OMB Director Mulvaney:

Supervision, Enforcement and Fair Lending

Legal Theories

1. Last week, you testified that “regulation by enforcement is done, we’re not doing it anymore.” What does that mean?
 - a. Will CFPB open new investigations under its Unfair, Deceptive, Abusive Acts and Practices enforcement authority? If so, what criteria will CFPB use to determine whether to open these investigations?
 - b. Will CFPB continue to negotiate settlements or file lawsuits under its Unfair, Deceptive, Abusive Acts and Practices enforcement authority? If so, what criteria will CFPB use to determine whether to negotiate settlements or file lawsuits?
 - c. Will CFPB continue to prosecute lawsuits already brought under its Unfair, Deceptive, Abusive Acts and Practices enforcement authority? If so, what criteria will CFPB use to determine whether to prosecute lawsuits?
2. In either the supervisory or enforcement contexts, will CFPB take action against regulated entities whose neutral policies have a disparate impact on a certain protected classes of consumers?

Supervision and Enforcement

3. Is your review of enforcement cases still ongoing? When is it projected to end?
4. Please provide a list enforcement cases currently active in Federal Court, including the court, the docket number, and the judge.
5. How many enforcement actions were filed in from November 25, 2016-November 24, 2017?
6. How many of those were fair lending cases brought with the Justice Department in in the same period?
7. On average, how much does CFPB spend on enforcement investigations where it does not subsequently file a lawsuit?
8. On average, how much does CFPB spend on those enforcement cases that are settled?
9. On average, how much does CFPB spend on enforcement cases that are filed in Federal court or on the administrative docket?
10. How much in relief did consumers obtain from CFPB enforcement actions last year?
11. How many exams did CFPB do from November 25, 2016-November 24, 2017?
12. How many of those were fair lending examinations?
13. How much, on average, did examinations cost from November 25, 2016-November 24, 2017?

14. How long, on average did these examinations take from November 25, 2016-November 24, 2017?
15. How much in relief did consumers get from violations discovered during exams from November 25, 2016-November 24, 2017?
16. How many new enforcement investigations have been initiated during your time at the CFPB?
17. How many open cases have been dropped?
18. In how many cases has CFPB asked for a continuance? Please provide a list of all such cases, the continuance asked for by CFPB, and the current status.
19. How many examinations have been completed since you took over?
20. How many of those were fair lending examinations?
21. How much on average did those examinations cost?
22. How long on average did they take?
23. How much in relief has been given to consumers from violations discovered in examinations?
24. How many exams are currently in progress?
25. How many of those are fair lending examinations?
26. How many exams are planned for the rest of 2018?
27. How many of those are fair lending examinations?
28. You previously committed to this Committee that you intended to preserve the practice of delegating decisions on the opening of new investigations to career Enforcement staff at CFPB. Can you confirm that CFPB's current process is free from interference by your new political appointees, including any decision-making about whether illegal practices identified via Supervision should result in the opening of a new Enforcement matter?
 - a. Specifically, have there been cases where career Enforcement staff have recommended opening a new enforcement matter, but have been prevented from doing so by you, your immediate staff, or other political appointees at CFPB?
 - b. If so, how many times has this occurred since November 25, 2017?
 - c. Why were career Enforcement staff not allowed to proceed with their recommendation in these cases?

Fair Lending

29. Did the CFPB perform a legal or other 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? If so, please provide the analysis.
30. 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 the new requirements that the OFLEO report to the Office of the Director enhance the CFPB's ability to protect consumers from unfair discrimination?
31. Please describe any independent analyses, such as third-party studies, that informed the decision to bring OFLEO under the Office of the Director and strip OFLEO of its enforcement and supervisory authority.
 32. Did you 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?
 33. Did you consult with other officials, employees, or political appointees at OMB or the White House about the OFLEO reorganization prior to its announcement?
 34. 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?

Student Loans

35. Title X of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* establishes the CFPB to administer and interpret Dodd-Frank's prohibition on unfair, deceptive and abusive acts or practices. The Act instructs the Bureau to supervise non-banks that are large participants of a market for consumer financial products or services, which includes federal student loan servicers and debt collectors.¹ Will the CFPB continue to supervise federal student loan servicers and debt collectors?
36. The U.S. Department of Education does not have the statutory authority to enforce the Dodd-Frank Act's prohibition on unfair, deceptive and abusive acts or practices. Do you believe CFPB has the statutory authority to enforce the Dodd-Frank Act's prohibition on unfair, deceptive and abusive acts or practices if the violations are committed by federal student loan servicers, debt collectors, or other Department of Education contractors?
37. Earlier this year, you informed the National Association of Attorneys General that you will be relying on the state law enforcement community to perform much of the routine investigation and oversight over participants in the markets you regulate. Specifically, you said, "We're going to be looking to the state regulators and the states' attorneys general for a lot more leadership when it comes to enforcement."² Does this principle extend to state-level oversight of student loan companies, including student loan servicers?
38. CFPB's proposed Student Loan Market Monitoring initiative, published in the Federal Register on September 8, 2017 (F.R. 2017-18776) pursuant to the Bureau's authority under Section 1022(c)(4) of the *Dodd-Frank Wall Street Reform and Consumer*

¹ 12 U.S.C. § 5481(5), (15); 12 USC § 5514(a)(1)(B); 12 CFR 1090.106; 12 CFR 1090.105

² <https://www.americanbanker.com/news/ags-not-cfpb-should-take-greater-role-on-enforcement-mulvaney>

Protection Act, proposes “quarterly data collection on aggregated student loan servicing metrics and borrower outcomes from student loan servicers.” Please provide an update on the status of this initiative.

39. CFPB’s proposed Student Loan Market Monitoring initiative requires approval from the Office of Management and Budget in order to precede. Given your role as the head OMB, please provide a detailed explanation as to why this data collection has yet to be implemented.
40. Please provide any memoranda, reports, analysis, or correspondence prepared by any of the following parties related to proposed Student Loan Market Monitoring following the closing of the public comment period on October 8, 2017:
 - a. The Office of Management and Budget
 - b. The U.S. Department of Education
 - c. The Consumer Financial Protection Bureau
41. Earlier this year, you provided CFPB staff with a memorandum indicating that you intend to use data, including data on consumer complaints, to inform Bureau priorities, including rulemaking, supervision and enforcement.³ The Bureau has received more than 60,000 student loan complaints since 2012 and student loan companies are routinely among the most complained-about financial services companies you regulate. Navient was also the subject of more CFPB complaints than any other company in the country during the first quarter of 2017, including Wells Fargo, Equifax, and other national banks and credit unions. As student loan defaults continue to set new records each year, what steps is CFPB taking to address unfair, deceptive, or abusive acts or practices in federal and private student lending that exacerbate the default crisis? How will complaints from borrowers inform this work?
42. As Director of OMB, you’re responsible for overseeing and managing the costs associated with the U.S. Department of Education’s student loan servicing and collections contracts, while the Bureau is simultaneously responsible for independently policing the companies contracted to perform these servicing and collections functions when they violate federal consumer protection law. These separate responsibilities are in conflict. What steps have you taken to insulate the Bureau’s oversight of student loan companies from the Administration’s political or policy direction on the administration of the Education Department’s contracts?
43. How do you plan to ensure that your duty as OMB Director to protect taxpayers’ investment in federal loan servicing contractors does not compromise your obligation at CFPB to fairly and independently administer federal consumer protection laws with respect to these companies?
44. Dodd-Frank Act Section 1035(c) establishes the functions of the student loan ombudsman and states that the ombudsman shall resolve complaints “in collaboration with the Department of Education and with institutions of higher education, lenders, guaranty agencies, loan servicers, and other participants in private education loan programs”. Dodd-Frank Act Section 1035(c) also requires the ombudsman to establish a memorandum of understanding with the Department of Education’s student loan ombudsman “to ensure coordination in providing assistance to and serving borrowers seeking to resolve complaints related to their private education or Federal student

³ <https://www.consumerfinancemonitor.com/wp-content/uploads/sites/14/2018/01/Mulvaney-memo.pdf>

loans.”⁴ Given the U.S. Department of Education’s August 2017 decision to terminate existing memoranda of understanding between the CFPB and the Education Department, how does the CFPB plan to collaborate with the Education Department to resolve student complaints related to federal student loans?

45. Will CFPB comply with Dodd-Frank Act Section 1035(c) and establish a new memorandum of understanding with the Education Department?
46. In accordance with Dodd-Frank Act Section 1035(c) requirement to “ensure coordination” with the Department of Education “in providing assistance to and serving borrowers seeking to **resolve complaints related to their private education or Federal student loans**”, how will the CFPB work with the Department of Education to resolve complaints related to borrowers’ federal student loans?
47. If CFPB plans to refer complaints to the Education Department, how will CFPB ensure that such complaints are fully resolved after referral?
48. If CFPB plans to refer complaints to the Education Department, how will complaint substance and volume inform the Bureau’s student loan enforcement and supervision as it relates to federal student loan contractors?
49. Will CFPB continue to produce its monthly complaint snapshot highlighting consumer complaints about student loans, including federal student loans?
50. Will CFPB continue to include federal student loan complaints in its consumer complaint database?

Operations

Budget

51. How much does the CFPB intend to request in transfers from the Federal Reserve for the remaining two quarters of the fiscal year?
52. How much of the reserve remains?
53. The Office of Management and Budget’s FY2019 budget request asks for \$545 million for the CFPB. Does CFPB intend to request transfers from the Fed consistent with the budget request in the coming fiscal year?
54. Please list any multi-year contracts or projects that were started prior to FY2018 for which payment will be due in subsequent fiscal years and the amount and timing of those payments.
55. How much does CFPB pay annually in rent for its headquarters and for each regional office?
56. You have said repeatedly that you intend to cut CFPB’s budget by 30%. Please describe process the Bureau intends to use to develop its budget and make spending decisions for the next year,
 - a. Who will make the final decisions?
 - b. What role will political appointees as the agency play in the budget process, particularly the so-called “PADs,” the Chief of Staff, and Senior Adviser Brian Johnson?
 - c. What role will CFO Eli Reilly and the rest of the career staff in her office play in the budget process?

⁴ 12 U.S.C. § 5535

- d. What role will CSO Dave Uejio and the rest of the career staff in his office play in the budget process?
 - e. What role will the career Associate Directors play in making budget recommendations for their divisions?
57. Employee compensation and benefits are CFPB's biggest budget line item. Will CFPB initiate a reduction in force under its collective bargaining agreement and lay off employees to meet its aggressive budget targets? Will CFPB seek to renegotiate the compensation and benefits chapters of its collective bargaining agreement?

Cybersecurity

58. In early December, you announced a freeze in CFPB's collection of personally identifiable information (PII). Is that freeze still ongoing?
59. 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?
60. What specific changes in examination or enforcement 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 or enforcement staff about changes in examination procedures.
 - b. Please describe any changes to procedures for obtaining and reviewing records in discovery precipitated by your 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 you, 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?
61. 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?

62. Did you consult with the CFPB Inspector General before instituting your PII freeze?
63. Did CFPB consult any other agency before instituting the PII freeze?
64. Did you consult any other cyber security expert before instituting the PII freeze?
65. Did CFPB consult with any lobbyist or other individual representing any financial services firm or other regulated entity before instituting the PII freeze?
66. You testified that the CFPB is in the process of completing an analysis of the agency's cybersecurity vulnerabilities.
 - a. Please describe the scope of the review and how it is being conducted.
 - b. What is the specific goal of the review?
 - c. Which CFPB personnel are involved?
 - d. Which other agencies are involved?
 - e. Which private companies or individuals representing private companies are involved?
 - f. How much is the review expected to cost?
 - g. How long is it projected to last?
67. How much has CFPB spent each year on cybersecurity measures in each of the last five years?

Personnel

68. Shortly after arriving at the CFPB, you announced that you intended to hire political appointees "now," because career staff that were hired before your arrival were "political anyway." How did you know the political affiliations of CFPB career staff?
 - a. Did you ask CFPB staff for their political affiliation?
 - b. In hiring civil servants and making decisions about individuals' responsibilities, do you or your designees employ a political or ideological litmus test?
69. Before bringing political appointees to the CFPB, did anybody at the agency analyze whether any other independent agency have a similar structure where a political appointee oversees each division?
70. Please provide the justifications sent to OPM in support of each request CFPB made for authority to hire political staff.
71. In a recent letter, the CFPB told me that the agency currently employs eight political appointees, excluding you and several political detailees from other agencies.
 - a. Are there plans to hire more political appointees?
 - b. Please provide the position descriptions and salary bands for the all political appointees and most senior career staffer they supervise, where applicable, including for political positions that have not yet been filled.
 - c. Please indicate who was performing the duties included in their position description before political appointee was hired.
72. In a recent letter, the CFPB told me that the agency has employed five political appointees from other agencies as reimbursable detailees.
 - a. Please provide position descriptions for each of these detailees.
 - b. Please indicate who was performing the duties included in their position description before the detailee was hired at the bureau.
 - c. Please list how much CFPB is paying to each of these detailees' salary.
73. What is your salary? How much is paid by the CFPB?

Accountability

74. Other than the CFPB, there are four other federal banking regulatory agencies: the OCC, the Federal Reserve, the FDIC, and the NCUA.
 - a. Are any of these other banking regulatory agencies funded through the congressional appropriations process?
 - b. Are “major” rules issued by any of these other banking regulatory agencies subject to congressional approval before they take effect?
75. Since the CFPB was created by Congress, how many reports relating to the CFPB has the Federal Reserve’s Inspector General issued?
76. The CFPB Director must testify before Congress four times a year. Are the heads of the OCC, FDIC, and NCUA subject to a similar requirement?
77. The CFPB’s rules may be vetoed by the Financial Stability Oversight Council (FSOC). Are rules issued by any of the other banking regulators subject to an FSOC veto?

Research, Markets and Regulations

Payday Rule

78. What caused you to reverse your prior position that only Congress has the ability to delay or reverse the CFPB Payday Rule?
 - a. Please provide a list of CFPB personnel and OMB personnel who provided legal advice with respect to the Payday Rule prior to December 4, 2017, and a summary of the advice they provided.
 - b. Please provide a list of all the meetings where you, Kirsten Mork, Emma Doyle, Eric Blankenstein or Brian Johnson were present and the Payday Rule was discussed, including the date, time, and other attendees at the meeting, and a summary of the content of those meetings.
79. What analysis did the CFPB undertake before deciding to halt the Payday Rule on January 16? What did these analyses conclude about the impact of the decision on lenders and borrowers?
80. Did you or other officials meet with or communicate with representatives of the payday loan industry prior to the January 18 decision to dismiss the case against Golden Valley Lending, Inc., Silver Cloud Financial, Inc., Mountain Summit Financial, Inc., and Majestic Lake Financial? If so, please provide a list of all such meetings, and a brief discussion of their content.
81. Did you or other officials meet with or communicate with representatives of World Acceptance Corporation or the installment loan industry prior to the January 22 decision to drop the investigation into the case? If so, please provide a list of all such meetings, and a brief discussion of their content.
82. Please provide all communications related to the discussion of the Payday Rule, the dismissal of the Kansas case, and the halting of the investigation into World Acceptance Corporation, including email on personal or official accounts from custodians Mulvaney, Mork, Doyle, Blankenstein or Johnson that contain the words “payday,” “Small dollar,” “installment,” “auto,” “vehicle,” “Golden Valley,” “Silver Cloud,” “Mountain Summit,” “Majestic Lake,” or “World Acceptance.”

Miscellaneous

83. You claim you were lawfully appointed by President Donald Trump to be Acting Director of the CFPB pursuant to the Vacancy Reform Act. Will you comply with the time limitations of 5 U.S.C. § 3346?
- a. How do you interpret the word “days” in this statute? Calendar days? Business days? Days that you actually work at the CFPB? What is your legal basis for this interpretation? Please cite any relevant legal precedent.
 - b. As of April 20, 2018, how many “days” have you served in your role at the CFPB? Please provide the exact number of days in response to this question.
84. On April 9, 2018, the Community Financial Services Association of America (CFSA) and the Consumer Service Alliance of Texas today filed a federal lawsuit against CFPB. Have you or any member of your staffs at either the OMB or CFPB met with CFSA?
- a. If so, please provide the date(s), attendees of the meeting(s), and topics or agenda, including whether litigation against the Bureau or its small dollar lending rule discussed.
85. Earlier this month, CFPB appealed a judge’s decision that ordered CashCall, a payday loan company, to pay a \$10.3 million fine – a fine well below the \$287 million sought by CFPB.
- a. Were you or your immediate staff involved in the decision to appeal this ruling?
 - b. If so, please describe your involvement.
 - c. Prior to the April decision to appeal, did you have any contact with Paul Reddam, CEO of CashCall, or any other individual representing or affiliated with CashCall?
 - d. If so, where and when did this contact occur, and what was the nature of any discussions you had with Mr. Reddam or any other individual representing or affiliated with CashCall?