

Mr. Mark Bialek, Inspector General
Consumer Financial Protection Bureau
20th Street and Constitution Avenue NW
Mail Stop K-300
Washington, DC 20551

July 24, 2018

Re: Request for Investigation into Acting Director Mulvaney’s Relationship with the Payday Lending Industry

Dear Inspector Bialek:

We, the undersigned organizations, respectfully request that you investigate whether John Michael Mulvaney, Acting Director of the Consumer Financial Protection Bureau, has violated ethics regulations governing the conduct of executive branch employees by giving preferential treatment to the payday lending industry.

While a Congressman representing South Carolina’s 5th congressional district from January 2010 to February 2017, Acting Director Mulvaney accepted tens of thousands of dollars in campaign contributions from the payday lending industry and worked to undermine any attempts to regulate the industry, particularly regulation by the CFPB. As detailed below, Acting Director Mulvaney’s actions and comments during his first seven months as head of the CFPB make clear that he has not changed his stance on payday lending regulation despite his change in role. Since his appointment as Acting Director of the CFPB, he has continued to undermine efforts to hold the payday lending industry accountable for egregious abuses that threaten the financial security of Americans. He has acted in direct contravention of the CFPB’s mandate to protect consumers from unfair, deceptive or abusive practices through both his regulatory actions—such as rolling back the payday lending rule and terminating investigations and enforcement actions against payday lenders—and his messaging, in particular communicating with the representatives of the payday lending industry while avoiding meetings with consumer representatives and instead insulting them.

I. Federal Regulations Prohibit Executive Branch Employees From Giving Preferential Treatment

Executive branch employees must adhere to ethical standards to “ensure that every citizen can have complete confidence in the integrity of the Federal Government.”¹ Among other principles, employees must “act impartially and not give preferential treatment to any private

¹ 5 CFR § 2635.101(a).

organization or individual.”² In particular, executive branch employees should not be influenced by individuals’ or organizations’ political clout or campaign contributions when making decisions that affect those individuals’ or organizations’ interests.³

II. Acting Director Mulvaney Has Shown Partiality Toward the Payday Lending Industry Prior to and During His Appointment as Acting Director

Acting Director Mulvaney evinced partiality toward the payday lending industry while a Congressman from January 2010 to February 2017, and this partiality has continued since his appointment as Acting Director of the CFPB in November 2017.

A. Congressman Mulvaney Maintained a Cozy Relationship with the Payday Industry

While serving as a Congressman from 2010 until February 2017, Acting Director Mulvaney maintained a cozy relationship with the payday lending industry and consistently did the industry’s bidding.

1. Relationship and Campaign Contributions

Then-Congressman Mulvaney was a friend of the payday lending industry throughout his time in office, accepting over \$60,000 in campaign contributions from payday lenders.⁴ He was the keynote speaker at a conference in 2016 sponsored by a national trade organization representing payday lenders.⁵ And, in February 2017, shortly after Mulvaney was nominated to be the OMB Director, his longtime chief of staff became a lobbyist representing, among others, a payday lending company seeking to lobby on the single issue of “CFPB reform.”⁶

² 5 CFR § 2635.101(b)(8).

³ See United States Securities and Exchange Commission, Memorandum from Inspector General H. David Kotz to SEC Chairman Christopher Cox, Report of Investigation: Case No. OIG-431, Re-Investigation of Claims by Gary Aguirre of Preferential Treatment and Improper Termination (Sept. 30, 2008), at 187-88 <http://pogoarchives.org/m/fo/sec-oig-report-20080930.pdf> (finding that SEC enforcement supervisors “conducted themselves in a manner that raised serious questions about the impartiality and fairness” of their investigation into a company’s possible insider trading because the “political clout” of another company’s CEO—who was suspected of being the tipper—appeared to have influenced the scope of the investigation and their enforcement decisions).

⁴ OpenSecrets.org, Payday Lenders, <https://www.opensecrets.org/industries/summary.php?ind=F1420&cycle=All&recipdetail=H&mem=Y>, (last visited June 7, 2018).

⁵ Jonathan Larsen, *Trump Pick to Lead Watchdog Has Deep Ties to Payday Lenders*, TYT NETWORK, Nov. 28, 2017, <https://tytnetwork.com/2017/11/28/trump-pick-to-lead-lending-watchdog-has-deep-ties-to-payday-lenders/>.

⁶ Mercury, *Mercury Welcomes Senator David Vitter, Senior GOP Hill Adviser Allen Simpson & Veteran Lobbyist Brent Thompson*, Feb. 3 2017, <https://www.opensecrets.org/lobby/lobbyist.php?id=Y0000052708L&year=2017>; OpenSecrets.org, Lobbyist Profile for Al Simpson, <https://www.opensecrets.org/lobby/lobbyist.php?id=Y0000052708L&year=2017> (last visited June 11, 2018). Al Simpson lobbying registration, September 1, 2017: <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=72206AE6-F864-4027-8BEE-858FC7CC79CC&filingTypeID=1>

Mulvaney’s fundraising from the payday lending industry coincided with specific policy positions benefitting the industry. In particular, in 2016, in the days prior to and after sending a letter to the CFPB criticizing the Bureau’s rulemaking proposal to regulate payday lending, he received \$18,000 in campaign contributions from the payday lending industry.⁷ He accepted \$4,500 from World Acceptance Corporation, an installment lender against whom the CFPB dropped an investigation shortly after Mulvaney took over at the CFPB.⁸ During his career as a congressman, Mulvaney took thousands in contributions from a PAC affiliated with Security Group, Inc., a South Carolina payday lender, and later oversaw the decision to significantly scale back the penalty sought by the CFPB in an enforcement action against the company.⁹

In a recent speech, Mulvaney declared that campaign contributions determined whom he met with as a Congressman, stating: “We had a hierarchy in my office in Congress. If you were a lobbyist who never gave us money, I didn’t talk to you. If you were a lobbyist who gave us money, I might talk to you.”¹⁰

2. Legislative Actions

Then-Congressman’s Mulvaney’s close relationship with the payday lending industry made him a reliably fierce defender of the industry’s priorities.

Then-Congressman Mulvaney consistently sought to limit regulation of the payday lending industry, most prominently by criticizing and attempting to weaken the CFPB. In 2014, then-Congressman Mulvaney called the CFPB a “joke . . . in a sick, sad kind of way” and acknowledged that “some of us would like to get rid of it” altogether.¹¹ On many occasions, he introduced or supported legislation to eliminate the CFPB or weaken its regulatory powers, including:

⁷ *Members of Congress Took Thousands From Payday Lenders Within Days of Taking Official Actions to Benefit Industry*, ALLIED PROGRESS, Apr. 26, 2018, <https://alliedprogress.org/news/senators-representatives-took-thousands-from-payday-lenders-within-days-of-taking-official-actions-to-benefit-industry/>.

⁸ John Hill, *CFPB Drops Investigation into World Acceptance Corp.*, LAW360, Jan. 23, 2018, <https://www.law360.com/articles/1004846>.

⁹ Allied Progress, *Mulvaney Cut CFPB Fine in Half for Predatory Lender (That Gave Him Thousands in Campaign Cash)*, June 28, 2018, <https://alliedprogress.org/news/mulvaney-cut-cfpb-fine-half-dropped-charges-predatory-lender-showered-campaign-cash/>.

¹⁰ Chris Cillizza, *Mick Mulvaney Just Said the Swampiest Thing Ever*, CNN, Apr. 25, 2018.

¹¹ Emily Stewart, *Mick Mulvaney Once Called the CFPB a “Sick, Sad” Joke. Now He Might be in Charge of It*, VOX, Nov. 16, 2017, <https://www.vox.com/policy-and-politics/2017/11/16/16667266/mick-mulvaney-cfpb-cordray-omb-joke>.

- introducing a bill in March 2016 that would have established a moratorium on the CFPB’s ability to issue or enforce rules or regulations on payday loans;¹²
- co-sponsoring a bill in July 2015 that would have eliminated the CFPB;¹³ and
- voting in favor of a bill in February 2014 that would have defunded the CFPB and replaced it with an independent Financial Product Safety Commission headed by a Federal Reserve official and four presidential appointees.¹⁴

According to the *International Business Times*, which reviewed over 200 pages of correspondence between the CFPB and Mulvaney during his six years in Congress, an overarching critique of his correspondence with the CFPB “revolved around the agency’s attempts to regulate the payday lending industry . . .”¹⁵ This correspondence includes:

- a December 1, 2016 letter to the CFPB signed by Mulvaney and other lawmakers that criticized the agency’s proposed payday lending rule for “regulat[ing] an industry that is already highly regulated . . .” and preempting state laws;
- a April 8, 2016 letter to the CFPB co-authored with Congressman Neugebauer that criticized the CFPB for proposing to enact regulation of payday lenders that is stricter than some states’ laws, which the letter framed as “disregard for the current state-based regulatory framework . . .”;
- a January 26, 2016 letter authored by Mulvaney and other South Carolina Republican lawmakers that criticized the CFPB for proposing to enact a payday lending rule that is stricter than many states’ laws and asking the CFPB “not to issue rules and regulations governing short-term credit that would interfere with what has worked to protect consumers in the state of South Carolina;” and
- an August 5, 2013 letter signed by Mulvaney and several other Republican lawmakers requesting that the CFPB create an advisory board made up of non-bank lenders, including payday lenders, because these lenders “have been denied standing within the

¹² <https://www.congress.gov/114/bills/hr4737/BILLS-114hr4737ih.pdf>

¹³ 114th Congress (2015-2016), H.R. 3318 – To Eliminate the Bureau of Consumer Protection by Repealing Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, <https://www.congress.gov/bill/114th-congress/house-bill/3118/cosponsors?overview=closed#tabs>.

¹⁴ <https://www.congress.gov/bill/113th-congress/house-bill/3193/all-actions?overview=closed&q=%7B%22roll-call-vote%22%3A%22all%22%7D>

¹⁵ David Sirota, *Trump Financial Regulator Mulvaney Pushed CFPB to Back Off Industry that Bankrolled Him*, INTERNATIONAL BUSINESS TIMES, Dec. 8, 2017.

CFPB” and arguing that the CFPB’s recently published white paper on payday lending “demonstrates a one dimensional and biased approach” to the industry.¹⁶

B. Acting Director Mulvaney’s Statements and Actions Since His Appointment to the CFPB Evince Continued Partiality Toward Payday Lenders and Hostility Toward the Consumers the CFPB is Tasked with Protecting

Since his appointment to the CFPB, Acting Director Mulvaney has maintained a cozy relationship with the payday lending industry while consistently working to undermine the Bureau’s regulation of the industry.

1. Relationship with Payday Lenders and Consumer Groups

During his short time as Acting Director, Mulvaney has had communications with the payday and installment lending industry while avoiding meetings with consumer groups. In January 2018, the former CEO of World Acceptance Corporation—an installment lender against which the CFPB had recently ended a years-long investigation into its marketing and lending practices—emailed Mulvaney to express her happiness that the CFPB’s investigation into the company had been dropped and to indicate her interest in the director position at the CFPB.¹⁷

Prior to Mulvaney’s tenure as Acting Director, the CFPB filed a lawsuit against payday lender Cashcall in 2013 which went to trial in October 2017; in January 2018, the court imposed a \$10.3 million penalty against Cashcall but denied the Bureau’s request for fines and restitution of \$287 million.¹⁸ One month later, in February 2018, while visiting an exclusive golf tournament in the Bahamas, Mulvaney discussed the CFPB’s ongoing case against the lender Cashcall with its CEO J. Paul Reddam. Mulvaney told Reddam that he thought all the payday lending cases had been dismissed but that he would refer Reddam’s questions to a deputy.¹⁹

Mulvaney’s open-door policy with the payday lending industry has not extended to representatives of the consumers that the agency is supposed to protect. Although the CFPB is required by statute to meet with its Consumer Advisory Board, which consists of experts from academia, consumer and community groups and the financial services industry, at least twice a year to discuss emerging issues and concerns, Acting Director Mulvaney cancelled the in-person meetings with the Board scheduled in February and May of this year. After the second meeting

¹⁶ All correspondence obtained by the International Business Times is available at:

<https://www.documentcloud.org/documents/4324470-CFPB-Mulvaney-Cpresondeince.html>.

¹⁷ Kevin Dugan, *Payday Lender Sent Cold Email to Mick Mulvaney for CFPB Gig*, NEW YORK POST, March 6, 2018, <https://nypost.com/2018/03/06/payday-lender-sent-cold-email-to-mick-mulvaney-for-cfpb-gig/>.

¹⁸ Consumer Financial Protection Bureau, Semi-annual Report of the Bureau of Consumer Protection, April 2018, at 43, <https://financialservices.house.gov/uploadedfiles/hrg-115-ba00-wstate-mmulvaney-20180411-sd001.pdf>. Glenn Thrush & Alan Rappeport, “*Like a Mosquito in a Nudist Colony: How Mick Mulvaney Found Plenty to Target at Consumer Bureau*,” NEW YORK TIMES, May 7, 2018.

¹⁹ Glenn Thrush & Alan Rappeport, “*Like a Mosquito in a Nudist Colony: How Mick Mulvaney Found Plenty to Target at Consumer Bureau*,” NEW YORK TIMES, May 7, 2018.

was cancelled, Ann Baddour, the chair of the Board and state director of a Texas-based consumer advocacy organization, stated: “It appears the bureau does not want to engage with us. . . . Staying silent would violate our ethical responsibility to the bureau and the American people.”²⁰

A few days later, the Bureau fired all 25 members of the Consumer Advisory Board and announced that it would appoint new members in the fall. In a final jab at the Board, an agency spokesman said that Board members “seem more concerned about protecting their taxpayer funded junkets to Washington, D.C., and being wined and dined by the Bureau than protecting consumers,” even though several members said they were willing to pay their own way to attend the meetings.²¹ Ms. Baddour stated that the Board’s dismissal indicates that Acting Director Mulvaney “has no interest in hearing the perspectives of those who work with struggling American families.”²²

2. Regulatory Actions

The CFPB’s official actions toward the payday lending industry since Mulvaney’s appointment are a 180 degree change in direction from the previous Director’s and evince hostility toward any regulation of the industry.

(a) Payday Lending Rule

After five years of research on the payday lending industry and its impact on consumers, the CFPB finalized a rule in October 2017 that prohibits certain types of short-term small dollar lenders, including those who provide payday loans, from making such loans without reasonably determining that the consumers will have the ability to repay them. The proposed rule also prohibits these lenders from attempting to obtain repayment through checking accounts after two consecutive efforts have failed. On January 16, 2018—the day the payday lending rule was scheduled to go into effect—the CFPB announced in a two-paragraph press release that it would engage in a rulemaking process to reconsider the rule.²³ The Bureau further stated that it would consider requests for waivers from the rule’s first compliance deadline in April and has granted waivers to all entities that requested one.²⁴

Since announcing its intention to conduct rulemaking to reconsider the rule, the CFPB has attempted to circumvent the Administrative Procedure Act’s rulemaking requirements in

²⁰ David Dayen, *Mick Mulvaney is Required by Law to Meet with His Consumer Advisory Board. But He’s Refusing, Board Members Say*, THE INTERCEPT, June 4, 2018, <https://theintercept.com/2018/06/04/mick-mulvaney-cfpb-consumer-advisory-board/>.

²¹ Renae Merle, *Mulvaney Fires All 25 Members of Consumer Watchdog’s Advisory Board*, CHICAGO TRIBUNE, June 7, 2018.

²² *Id.*

²³ Consumer Financial Protection Bureau, CFPB Statement on Payday Lending, Rule, Jan. 16, 2018, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-statement-payday-rule/>.

²⁴ Joint Motion for Stay of Litigation and Stay of Agency Action Pending Review, *Community Financial Services Assoc. of America v. Consumer Financial Protection Bureau*, No. 1:18-cv-295 (LY), ¶4 (W. D. Tx. May 31, 2018).

order to immediately halt implementation of the payday lending rule. In April 2018, two payday lending trade groups sued the CFPB to block implementation of the payday lending rule arguing, *inter alia*, that the CFPB exceeded its statutory authority and that the CFPB is unconstitutional. A month later, the plaintiffs and the CFPB filed a joint motion asking the court to stay both the litigation and the rule’s August 2019 compliance date due to the agency’s intention to reconsider the rule.²⁵ Four consumer groups filed an amicus brief opposing the stay of the rule, in which they argued that the requested stay was “an end-run around the APA’s statutory requirements.”²⁶ On June 12, 2018, the court granted the stay of litigation but denied the stay of the rule’s compliance date.²⁷ A couple of days later, the plaintiffs filed a motion to reconsider the court’s decision, which the CFPB supported. In its brief on the motion for reconsideration, the CFPB urged a stay of the rule because the plaintiffs “have presented a substantial case on the merits of their claims that the rulemaking record did not provide substantial evidence for several findings underpinning critical elements of the Rule and that, to that extent, the Rule is therefore arbitrary and capricious.”²⁸

In sum, after implementing a rule that was the product of five years of analysis of the abuses in the payday lending industry, the CFPB under Mulvaney’s leadership has reversed course and now believes that this record does not provide a basis for the payday lending rule.

(b) Investigations and Enforcement Actions

Since Mulvaney became acting director, the CFPB terminated an enforcement action against an installment lender and dropped an investigation into another group of payday and installment lenders. It also recently settled an investigation into another payday lender initiated under Mulvaney’s predecessor Richard Cordray for an amount substantially less than what was sought by Cordray.

In January 2018, two days after announcing its intention to change the payday lending rule, the CFPB voluntarily dismissed a lawsuit brought against four payday and installment lenders in Kansas district court the previous April.²⁹ The complaint alleged that the loans offered by these companies—which had annual percentage rates between 440 percent and 950 percent—were inadequately disclosed to consumers and void under at least 17 state laws and that the

²⁵ *Id.*

²⁶ Memorandum of Amici Curiae Public Citizen Inc., Americans for Financial Reform Education Fund, Center for Responsible Lending and National Consumer Law Center In Opposition to the Parties’ Joint Motion for a Stay of Agency Action Pending Review, *Community Financial Services Assoc. of America v. Consumer Financial Protection Bureau*, No. 1:18-cv-295 (LY), at 4 (W. D. Tx. June 12, 2018).

²⁷ Order, *Community Financial Services Assoc. of America v. Consumer Financial Protection Bureau*, No. 1:18-cv-295 (LY) (W. D. Tx. June 12, 2018).

²⁸ Response in Support of Plaintiffs’ Motion for Reconsideration, at 10-11, *Community Financial Services Assoc. of America v. Consumer Financial Protection Bureau*, No. 1:18-cv-295 (LY) (W. D. Tx. June 22, 2018).

²⁹ Consumer Financial Protection Bureau, Semi-annual Report of the Bureau of Consumer Protection, April 2018, at 24, <https://financialservices.house.gov/uploadedfiles/hhrg-115-ba00-wstate-mmulvaney-20180411-sd001.pdf>; Notice of Voluntary Dismissal Pursuant to F.R.C.P. 41(a)(1)(A)(i), *Consumer Financial Protection Bureau v. Golden Valley Lending, Inc.* No. 17-cv-315 (D. Kan. Jan. 18, 2018).

lenders made deceptive demands and illegally took money from consumers' bank accounts.³⁰ CFPB staff told reporters that "Mulvaney decided to drop the lawsuit even through the entire career enforcement staff wanted to press ahead with it."³¹

Also in January 2018, installment lender World Acceptance Corporation announced that it had been informed by the CFPB that the agency was terminating an investigation into the company's marketing and lending practices and would not pursue enforcement action.³² The company had previously disclosed to shareholders that it had received a civil investigative demand from the CFPB in 2014 and that the CFPB's enforcement office notified the company in August 2015 that it was considering recommending that the CFPB take legal action against the company.³³ In 2013, ProPublica published a scathing expose of World Acceptance Corporation's business practices, in which it characterized installment loans as "deceptively expensive" and found that "World and its competitors push customers to renew their loans over and over again, transforming what the industry touts as a safe, responsible way to pay down debt into a kind of credit card with sky-high annual rates, sometimes more than 200 percent."³⁴

And, on June 13, 2018, the CFPB announced a \$5 million settlement with Security Group, Inc., a South Carolina corporation engaged in payday lending, based on an investigation begun under Mulvaney's predecessor Richard Cordray that found that the company made improper in-person and telephonic collections attempts on installment loans.³⁵ According to news reports, Cordray wanted to pursue additional charges against the company for pushing borrowers to buy insurance that was bundled into the loans and was seeking an \$11 million penalty, \$8 million of which would compensate consumers who had been pushed into buying insurance.³⁶ Mulvaney decided to drop the insurance claim and substantially reduce the penalty

³⁰ Complaint ¶ 49, 59, 119-20 *Consumer Financial Protection Bureau v. Golden Valley Lending, Inc.*, (D. Kan. Apr. 27, 2017); Consumer Financial Protection Bureau, 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/>; Zeke Faux, *Trump Led CFPB Signals Shift by Dropping Payday Lender Lawsuit*, BLOOMBERG, Jan. 18, 2018, <https://www.bloomberg.com/news/articles/2018-01-18/trump-led-cfpb-signals-shift-by-dropping-payday-lender-lawsuit>.

³¹ Chris Arnold, *Trump Administration Plans to Defang Consumer Protection Watchdog*, NPR, Feb. 12, 2018.

³² John Hill, *CFPB Drops Investigation into World Acceptance Corp.*, LAW360, Jan. 23, 2018, <https://www.law360.com/articles/1004846>.

³³ World Acceptance Corp., Form 8-K (Aug. 10, 2015).

³⁴ Paul Kiel, *The 182 Percent Loan: How Installment Lenders Put Borrowers in a World of Hurt*, PROPUBLICA, May 13, 2013, <https://www.propublica.org/article/installment-loans-world-finance>.

³⁵ Consumer Financial Protection Bureau, *Bureau of Consumer Financial Protection Settles with Security Group, Inc.*, June 13, 2018, <https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-settles-security-group-inc/>.

³⁶ Patrick Rucker, *Mulvaney- Led U.S.CFPB Slashes Payday Lending Penalty: Sources*, REUTERS, June 28, 2018, <https://www.reuters.com/article/us-usa-cfpb-payday/mulvaney-led-u-s-cfpb-slashes-payday-lender-penalty-sources-idUSKBN1JO17J>.

sought by his predecessor. During his career as a congressman, Mulvaney took thousands in contributions from a PAC affiliated with Security Group, Inc.³⁷

III. Conclusion

Acting Director Mulvaney's communications and official agency actions go beyond policy preferences and evince a clear partiality to the payday lending industry and hostility toward any regulation of that industry. Since his appointment, Mulvaney has had communications with payday lending groups while avoiding dialogue with the Consumer Advisory Board—a board partly consisting of advocates for consumers and low-income communities with whom the CFPB is required to meet. In addition, the CFPB, without any explanation, decided to reconsider a payday lending rule that was the product of five years of research and analysis and has even joined industry attempts to stay the rule in court. And Mulvaney has ended a years-long investigation into an installment lender, dropped a case against a payday lender, and substantially reduced the fine sought against another payday lender.

Acting Director Mulvaney's defense of the payday lending industry contravenes the mission of the CFPB and puts consumers at risk. It also likely violates his obligation to act impartially in the performance of his duties. For these reasons, we respectfully request that you investigate whether Acting Director Mulvaney has violated his ethical duties by acting partially towards the payday lending industry.

Sincerely,

Michael R. Zucker
Director
Change to Win-Retail Initiatives Group

Lisa Donner
Executive Director
Americans for Financial Reform

³⁷ Allied Progress, Mulvaney Cut CFPB Fine in Half for Predatory Lender (That Gave Him Thousands in Campaign Cash), June 28, 2018, <https://alliedprogress.org/news/mulvaney-cut-cfpb-fine-half-dropped-charges-predatory-lender-showered-campaign-cash/>.