United States Senate

May 13, 2020

Mr. Mark Bialek
Inspector General
Office of Inspector General
Board of Governors of the Federal Reserve System
20th St. and Constitution Ave. N.W.
Mail Stop K-300
Washington, DC 20551

Dear Mr. Bialek:

We write to request that you open an investigation into the Consumer Financial Protection Bureau's (CFPB or Bureau) rulemaking process for the Payday, Vehicle Title, and Certain High-Cost Installment Loans Rule (Payday Rule). Recent press reports detail a CFPB rulemaking process that, if true, flagrantly violates the Administrative Procedure Act's (APA) requirements—in which political appointees exerted improper influence, manipulated or misinterpreted economic research, and overruled career staff to support a predetermined outcome.[1]

The internal Bureau memorandum disclosed in press reports further suggests that from the outset of Mr. Mulvaney's time at the CFPB, he and his political appointees were determined to repeal the existing Payday Rule (2017 Payday Rule).[2] One of Mr. Mulvaney's first acts after becoming Acting Director was to announce that the Bureau would reconsider the 2017 Payday Rule.[3] Because of the memorandum, there is even more to suggest that he made this decision without any cost-benefit analysis, any briefing from career staff, or any new information that would justify the rule's reconsideration.[4] The memorandum also brings to light potentially disturbing information that career staff were discouraged from offering any reasons or justifications that would not support Mr. Mulvaney's decisions.[5]

The memorandum provides details of other instances in which political appointees worked to predetermine a course of action.[6] For example, at an industry conference, a senior political appointee apparently previewed information with payday lenders regarding "the Bureau's

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[1] *See* https://www.nytimes.com/2020/04/29/business/cfpb-payday-loans-rules.html, and Aug. 9, 2019 email and attached internal memorandum (Bureau Memo), *available at* https://int.nyt.com/data/documenthelper/6918-jonathan-lanning-cfpb-payday-rule/bfcc48b9ea9238728da2/optimized/full.pdf#page=1. The memorandum was written by a senior Bureau economist who worked on the Payday Rule and also references other Bureau communications, memoranda, and other documents that support its charges.
[2] https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-stop-payday-debt-traps/.
[3] https://www.consumerfinance.gov/about-us/newsroom/cfpb-statement-payday-rule/.
[4] *See* Bureau Memo Timeline at 12/13/17, 1/16/18 (Mulvaney announces intent to reconsider 2017 Payday Rule), 4/26/18 ("no benefit-cost analyses done in support of decision to reconsider").
[5] *See* Bureau Memo Timeline at 5/31/18.
[6] *See, e.g.*, *id*. at 5/21/19).

general approach to revoke the [ability-to-repay] provisions"[7] before this information was made available to the public. The memorandum indicates that this political operative shared this information on October 4, 2018—three weeks before the Bureau announced on October 26, 2018 that it was going to reconsider the 2017 Payday Rule's ability-to-repay provisions.[8] If true, this would not only be improper, but contrary to what the Bureau was concurrently telling Congress that "no decision had been made" about the 2017 Payday Rule.[9]

The memorandum also details the alleged persistent, repeated interference and attempts to manipulate or misinterpret research by political appointees to support their predetermined repeal outcome, including:

- "attempted influence into how the staff's [cost-benefit] economic analysis should be framed and presented," but which "show[ed] some significant errors in economic reasoning"[10];
- "advocating for ignoring the majority of the available research, and handpicking studies that supported a specific conclusion, regardless of their vintage or quality";[11]
- comments pushing career staff to "ignore numerous published estimates, its own internal analysis, and analyses that outside parties supplied during the 2017 Rule's notice and comment period because an individual in the front office 'doesn't agree with them'";[12] and
- political appointees' repeated reliance on study findings that are contradicted by the underlying data or studies written by industry-funded researchers.[13]

When Ms. Kraninger became Director in December 2018, she committed to following a rulemaking consistent with the "robust use of cost benefit analysis" that she described at her confirmation hearing.[14] That did not occur. Director Kraninger's first and only briefing with career staff on the payday rulemakings was on January 15, 2019.[15] As the memorandum details, political interference in the rulemaking process apparently continued throughout her tenure.[16]

In light of these disturbing allegations, we ask that you investigate to determine whether the Bureau's process for reconsidering and repealing the 2017 Payday Rule violated the Administrative Procedures Act or other federal laws and regulations.

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[7] *Id.* at 10/1/18 and 10/4/18.
[8] *See* https://www.consumerfinance.gov/about-us/newsroom/public-statement-regarding-payday-rule-reconsideration-and-delay-compliance-date/.
[9] Bureau Memo Timeline at 10/1/18 and 10/4/18.
[10] Bureau Memo Timeline at 12/28/19.
[11] *Id*. At 1/10/19.
[12] *Id*. at 5/21/19.
[13] *Id*. at 9/25/18 ("Mann's memo(s) showing his assertions are contradicted by his data) and 5/16/19 (same); 2/25/19 (discussing payday lending lawyer writing academic studies); *see also* https://www.washingtonpost.com/business/2019/02/25/how-payday-lending-industry-insider-tilted-academic-research-its-favor/.
[14] *See* K. Kraninger Opening Statement at July 18, 2019 U.S. Senate Committee on Banking, Housing, and Urban Affairs Hearing, https://www.banking.senate.gov/imo/media/doc/Kraninger%20Testimony%207-19-183.pdf.
[15] Bureau Memo Timeline at 1/15/19.
[16] *See*, *e.g.*, Bureau Memo Timeline at 12/28/18, 1/8/19, 1/9/19, 2/6/19, 2/26/19, 5/21/19, 5/28/19, 6/23/19.

We ask that your investigation, at a minimum, look into the following issues:

1. Allegations in the memorandum that Mr. Mulvaney had predetermined to reconsider the 2017 Payday Rule, including that:
    a. the Bureau did not engage in a cost-benefit analyses before deciding to reconsider the 2017 Payday Rule;
    b. career staff did not provide any input to Mr. Mulvaney before he made the decision to reconsider the 2017 Payday Rule.[17]

2. Whether Bureau officials or political appointees may have misled Congress in October 2018 that the Bureau was still considering whether to repeal the ability-to-repay provisions of the 2017 Payday Rule when, as alleged in the memorandum, a political appointee was reported to have told attendees at an industry conference on October 4, 2018 that the Bureau had already determined to revoke the ability-to-repay provisions of the 2017 Payday Rule.[18]

3. Allegations in the memorandum that the Bureau officials or political appointees made false or misleading statements to the public about the rulemaking, including
    a. "Public mischaracterizations of the [cost-benefit analysis] findings";[19]
    b. "Public statements that the Bureau did not discuss its proposal to rescind the rule with industry officials before announcing the proposal, despite [political appointee's] discussing the process at an industry conference, and a 'Bureau official' having discussions with an academic who received compensation from, and performed work for, an industry trade group's research arm."[20]

4. Allegations in the memorandum of improper political interference, manipulation, or influence in the rulemaking process, including whether Bureau political appointees:
    a. "attempted [to] influence into how the staff's [cost-benefit] economic analysis should be framed and presented";
    b. "advocate[ed] for ignoring the majority of the available research, and handpicking studies that supported a specific conclusion, regardless of their vintage or quality";
    c. Pushed career staff to "ignore numerous published estimates, its own internal analysis, and analyses that outside parties supplied during the 2017 Rule's notice and comment period because an individual in the front office 'doesn't agree with them'";
    d. Pressured career staff to use an economic analysis "deemed inaccurate and inappropriate and a general lack of appreciation of staff expertise";[21]

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[17] *See* Bureau Memo at 1 ("Apparent predetermination by the front office of the course of action for the NPRMs"); *see also supra* n. 4.
[18] *See supra* n. 7 and 8.
[19] *See* Bureau Memo at 2.
[20] *Id*.
[21] *See* Bureau Memo at 1; *see also* supra n. 10, 11, and 12.

5. Whether political appointees had the requisite education, qualifications, or expertise, or whether it was appropriate, to advise and interject their views in the rulemaking process, including allegations in the memorandum that:
    a. Political appointees "[cited] out of context sentences from articles that find the opposite of the conclusion he asserts";
    b. "[Office of Research staff] devoted hours of resources to walk [political appointee] through the data and simulations; it became clear [the political appointee] was incapable of accessing the data or using statistical programs that are commonly used by anyone trained in empirical economics"; and
    c. Other examples that "shows a misunderstanding of how economics as a dispassionate, rigorous, evidence-based social science works in practice."[22]

The above list of issues is non-exclusive, and we request that you investigate any other potential violations of federal law or regulation or Bureau policy. We also note that the memorandum references contemporaneous emails, memoranda, presentations, or other documents that corroborate the allegations.

Please contact Lauren Oppenheimer at Lauren_Oppenheimer@jones.senate.gov and Jan Singelmann at Jan_Singelmann@banking.senate.gov with any questions or concerns. Thank you for your attention to this critical matter.

Sincerely,

Doug Jones
U.S. Senator

Sherrod Brown
U.S. Senator

/s/

Chris Van Hollen
U.S. Senator

Elizabeth Warren
U.S. Senator

[22] Bureau Memo at 2-3.

Catherine Cortez Masto
U.S. Senator

Brian Schatz
U.S. Senator

Richard J. Durbin
U.S. Senator

Jeffrey A. Merkley
U.S. Senator