

Committee on Banking, Housing, and Urban Affairs
Nominations Hearing
July 19, 2018

Questions for Ms. Kathleen Laura Kraninger, Director-Designate, Bureau of Consumer Financial Protection, on behalf of Ranking Member Brown, Senator Jack Reed, Senator Robert Menendez, Senator Elizabeth Warren, Senator Brian Schatz, Senator Chris Van Hollen, Senator Mark Warner, and Senator Catherine Cortez Masto:

In 2012 and 2013, citing concerns about transparency and accountability, 44 Senators signed a letter stating they would not confirm anyone to the Consumer Financial Protection Bureau (CFPB) unless it was restructured as a five member commission, it was subjected to appropriations, and its rules could be more easily overturned by the Financial Stability Oversight Council. Mr. Mulvaney called for two of these structural changes, among other suggested changes to the statute.

- Do you support, without reservation, the current structure and funding mechanism of the CFPB?

Response: The Director of the Bureau has a responsibility to carry out the law as it is written, and run the agency consistent with various legal requirements and binding court precedent. That will be my focus.

- Do you believe the CFPB is constitutional in its current form? If you do not please explain why you or anyone else should be confirmed to a position that you believe is not appropriately accountable to Congress or the President, or may be unconstitutional.

Response: While this is an important question, the ultimate question of the constitutionality of the Bureau's structure is one for Congress or the courts to resolve. The Director of the Bureau has a responsibility to carry out the law as it is written, and run the agency consistent with various legal requirements and binding court precedent. That will be my focus.

- If confirmed, will you abstain from using any CFPB resources or your position as Director to advocate statutory changes to the structure, funding mechanism, or rulemaking processes of the CFPB?

Response: In the context of my above responses, I cannot prejudge and will not predict every decision that will come before me as director. If confirmed, I pledge to carry out the lawful powers and responsibilities of the Director to the best of my ability, mindful that my ultimate purpose is to serve the American people. I would note that Section 1012(c)(4) of the Dodd-Frank Act contemplates the submission of legislative recommendations to Congress by the Bureau Director.

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At a hearing on the Semi Annual Report of the CFPB, Mr. Mulvaney told Representatives and Senators that while he was required to appear in front of several committees in Congress, he was not required by the statute to answer questions from Congress.

- Do you agree with his reading of the statute?

Response: The Acting Director has discussed his interpretation of section 1016 of the Dodd-Frank Act in comparison to the requirements of other financial regulators in statute. You have my commitment to appear at the Bureau's semi-annual hearings and answer questions to the best of my ability, just as Acting Director Mulvaney and Director Cordray have done.

- If confirmed, will you commit to timely answering all inquiries from Congress?

Response: You have my commitment to appear at the Bureau's semi-annual hearings and answer questions to the best of my ability, just as Acting Director Mulvaney and Director Cordray have done. As a former Congressional staffer, I appreciate the important role that Congress plays in overseeing the Bureau and am committed to working with all Members of Congress in a productive manner.

In a speech to the American Bankers Association, Mr. Mulvaney said the first thing he did when he got to the CFPB is read the law – “the reading of the statute actually revealed some very interesting things” – whereupon he decided that the “Consumer Financial Protection Bureau” was a misnomer. Prior to reading the statute, while he was in Congress, Mulvaney criticized the CFPB but never raised its name as a concern. In his current role, he refers to the agency as the Bureau of Consumer Financial Protection (BCFP).

- Do you believe it is illegal or inappropriate to call the agency the Consumer Financial Protection Bureau, or identify it as such in official correspondence, work products, on real estate, etc?

Response: I do not know how the Bureau came to be identified as the “Consumer Financial Protection Bureau” rather than the “Bureau of Consumer Financial Protection,” as it was named in the Dodd-Frank Act. More specifically, I do not know whether there was a legal opinion, any marketing/branding research, or other evidence or data that resulted in that decision. As such, I do not have an opinion on whether it is illegal or inappropriate.

- Do you believe it is important that Americans easily recognize the CFPB and the materials it produces? Do you believe changing the name of the CFPB inhibits Americans recognition of the Bureau, or undermines years of branding efforts undertaken thus far?

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Response: Yes, I believe it is important for the Bureau to have a strong brand given its statutory responsibility for consumer financial education and collection and tracking of consumer complaints as well as other responsibilities. However, consistent with my response to the previous question, I do not have any information on the impact of the name change or of the strength of the Bureau's brand prior to the name change.

- As an OMB budget expert who oversaw the CFPB, what amount of CFPB resources are being spent to rebrand the CFPB? Do you think those resources were wisely deployed? Do you think it resulted in any confusion?

Response: I do not have access to information relating to the effects, if any, of the use of the Bureau's statutory name, including any budgetary impacts associated with this change. Should I be confirmed, I look forward to consulting with Bureau staff and learning more about this issue.

- If confirmed, will you commit further resources to renaming or rebranding the CFPB? If so, what portion of the Bureau's budget would you dedicate to renaming and rebranding efforts?

Response: I recognize that some have disagreed with the Acting Director's decision to return to the Bureau's statutory name. Consistent with my responses above, it is not appropriate to prejudge this issue, particularly without the benefit of information that is not available to me.

In a letter dated August 31, 2017 the Department of Education stated that it has "full oversight responsibility of federal loans." Do you agree with the Department of Education, or does the CFPB also have oversight responsibility of federal student loans? Please explain the full extent of the CFPB's responsibility regarding federal student loans according to your understanding of the law. In September 2017, the Department of Education terminated a Memorandum of Understanding with the CFPB regarding information sharing with the Student Loan Ombudsman, and is allegedly blocking a document request by CFPB in support of the Bureau's lawsuit against Navient, a student loan servicer.

- If confirmed to lead the CFPB, will you continue to press Navient and the Department of Education to provide responses to CFPB document requests?

Response: I know student lending is a significant issue for many Americans, as noted in my testimony. Under my stewardship, the Bureau will take aggressive action against bad actors who break the rules by engaging in fraud and other illegal activity. In addition, I plan to sit down with officials at the U.S. Department of Education to talk through what

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their efforts are, where the Bureau can be helpful, and what role the Bureau currently plays at a more detailed level, including understanding any outstanding document requests.

The President has used Twitter in an attempt to influence members of the Board of Governors of the Federal Reserve System, and to influence Mr. Mulvaney in his duties at the CFPB.

- If confirmed, do you pledge to perform your job independently of the President and anyone who reports to the President, and to ignore any attempts by the President or anyone who reports to the President to influence investigations, enforcement actions, or supervision of entities subject to CFPB oversight?

Response: As I noted in my testimony, the Congress through the Dodd-Frank Act gave the Bureau incredible powers and incredible independence from both the President and the Congress in its structure. I pledge to manage the Bureau consistent with its authorities and responsibilities under the law and to ensure its continued development as a mature regulator within our Nation's financial regulatory framework.

You told the committee you would look at disparate impact issues. When Brian Johnson, who has been appointed Deputy Director for the CFPB, was employed by the House Financial Services Committee, the Committee Majority issued a staff report that called disparate impact theory "controversial" and argued that disparate impact claims are not "cognizable under ECOA [the Equal Credit Opportunity Act]" and "...ECOA focuses solely on the intent of the actor.

- Do you agree with the conclusions of the staff report? In your opinion, can the CFPB enforce ECOA claims under theory of disparate impact?

Response: It is abhorrent that discrimination exists in society and in the markets. I am committed to enforcing the law with respect to discrimination. With respect to court cases and enforcement actions, as you are well aware, the arguments about disparate impact are very complicated. It is a challenging area, legally speaking, in part because the Supreme Court has never addressed whether disparate impact is cognizable under the Equal Credit Opportunity Act. I can commit to you, that should I be confirmed in this position, I will have a detailed conversation with the relevant staff on this topic, to better understand the positions the Bureau has taken in the past on this issue, and the status of any litigation on the issue. I will then use that information to take the appropriate actions to ensure that the Bureau is promoting fair lending within the applicable legal requirements.

- If you are confirmed, will the Deputy Director be part of the team who reviews the CFPB's use of the disparate impact theory?

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Response: If confirmed, I will have a detailed conversation with the relevant staff on this topic, to better understand the positions the Bureau has taken in the past on this issue, and the status of any litigation on the issue.

In your testimony, you identified transparency and accountability as priorities of yours.

- Will you pledge to maintain the Consumer Complaint Database in its current, transparent form so that financial companies can be held accountable by their customers?

Response: As I have previously stated, I will not prejudge any decision that will come before me at the Bureau, including whether to keep the consumer complaint database public. I am aware of the statutory responsibility for the Bureau to collect and track consumer complaints. If confirmed, I will fully examine this issue and all appropriate considerations with a focus on the ensuring the Bureau is transparent and accountable to the American people for its actions.

- If confirmed, will you reverse Mr. Mulvaney's reorganization of the Office of Fair Lending and Equal Opportunity and restore its enforcement powers, as required by statute?

Response: As I discussed in my testimony, enforcing the fair lending laws is a critical responsibility of the Bureau, regardless of organizational structure. I can commit to approaching the organizational structure with an open mind. It would be inappropriate and premature to make any staffing or organizational decisions prior to confirmation and the opportunity to meet with staff.

- If confirmed, will you reverse Mr. Mulvaney's reorganization of the Office for Students and Young Consumers?

Response: Student lending is a significant issue for many Americans and one that I will examine closely, if confirmed. I will review the structure of the organization with an open mind.

The Consumer Advisory Board (CAB) is composed of academics, consumer advocates, and industry representatives with deep financial experience, and was established by statute to help inform the CFPB Director of developments in consumer financial products and markets. The current CAB was disbanded by Mr. Mulvaney, and new charters were written, shrinking the size of the CAB.

- If confirmed, do you pledge to reassemble the CAB that Mr. Mulvaney disbanded, restore the charters, and meet with CAB members in order to learn more about the financial industry?

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Response: Should I be confirmed, I look forward to engaging with a broad range of external stakeholders, including the Bureau's advisory committees. While I recognize the importance of having many avenues for stakeholder engagement, I am committed to carrying out the Bureau's statutory requirements for engagement, including through the Consumer Advisory Board.

- Do you believe that CAB members are more concerned about protecting their taxpayer funded junkets to Washington, D.C., and being wined and dined by the Bureau, than protecting consumers?

Response: Should I be confirmed, I look forward to engaging with a broad range of external stakeholders, including the Bureau's advisory committees.

The CFPB Director also votes on the Financial Stability Oversight Council, whose job is to identify and mitigate threats to the stability of the financial system.

- What experience do you have forecasting or monitoring systemic risks to the economy?

Response: In a professional capacity, I have not had direct experience with the Financial Stability Oversight Council, but I have made myself familiar with the statutory responsibilities of the Bureau in this space. Further, if confirmed, I will engage with Bureau staff and other FSOC leadership to deepen my understanding of these important issues.

- What is the role of the Consumer Financial Protection Bureau in preventing financial catastrophes?

Response: Under the Dodd-Frank Act, the Bureau is responsible for implementing and enforcing Federal consumer financial laws to ensure fair, transparent, and competitive markets for consumer financial products and services. Further, the Bureau must identify risks to consumers and to the proper functioning of such markets.

- In your opinion, what are the most imminent threats to financial stability at present, and what should be done to mitigate those threats?

Response: If confirmed, I look forward to working with staff at the Bureau and the FSOC to more fully understand potential risks to financial stability. Consistent with the FSOC's statutory mandate, I believe that it is important to identify risks and ways to mitigate them. For example, among other things, given the heavy reliance on technology within the financial sector and society as a whole, I believe that cybersecurity incidents remain a significant concern. The recommendations in the 2017 FSOC annual report regarding information sharing, instituting and enhancing baseline protections, and rapid response

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and recovery are important mitigation efforts. I know these are important issues which I will examine closely in coordination with the other members of the FSOC.

Research by the Federal Reserve Bank of St. Louis found that 70% of subprime mortgages from 2000 to 2007 were refinancings. Please describe, in detail, your analysis of the role that subprime mortgage refinancings played in the economic collapse of 2008 and the resulting recession and foreclosure crisis.

Response: There were a multitude of causes to the financial crisis including subprime mortgage lending and “the vulnerabilities that created the potential for the crisis were years in the making,” as set forth in the Financial Crisis Inquiry Commission Report. Many factors, such as lax underwriting guidelines, regulatory changes, and the incentives for firms and banks to securitize those mortgages, spurred the subprime lending activity. Too many entities and individuals took risks since they could pass on those risks – clearly failures by regulators played a role as well. Major changes have been made to the system since the financial crisis, including standards for the ability to repay in mortgage lending.

The Office of Management and Budget often reviews agency responses to Questions for the Record before they are submitted to Congress. Following hearings with the Secretary Carson and Director Mulvaney regarding the Department of Housing and Urban Development (HUD) and Consumer Financial Protection Bureau, we have not received responses to submitted questions.

- Is it the responsibility of you or your staff to review responses to Questions for the Record before they are submitted to Congress by HUD or CFPB?

Response: The Office of Management and Budget coordinates interagency review of responses to Questions for the Record before they are submitted to Congress. There are certain agencies for whom this general policy does not apply, such as the Bureau.

- Is OMB responsible for part of the delay in responses to Congress?

Response: No.

Secretary Carson received Questions for the Record on April 5, 2018 following a hearing on March 22, 2018.

- How many days, in total, have HUD questions been under review at OMB? For how long do you think it is appropriate for OMB to withhold answers from Congress while it

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reviews agency responses?

Response: OMB begins interagency review of responses to Questions for the Record as soon as they are received, and works expeditiously to provide answers to Congress in a timely manner. HUD's responses were transmitted on Tuesday, July 26th.