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May 14, 2018

Mick Mulvaney
Acting Director
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

**RE: Request for Information Regarding Bureau Enforcement Processes
Docket No. CFPB-2018-0003**

Dear Acting Director Mulvaney:

I write in response to the Consumer Financial Protection Bureau's ("Bureau" or "CFPB") request for comments and information on its enforcement processes. Specifically, my comments highlight the critical importance of the Bureau's enforcement actions for California consumers, and the need for the Bureau's continued enforcement of federal consumer financial laws. To retreat from the vigorous enforcement that has been the hallmark of this agency would be to undermine the will of Congress, ignore the abuses that fueled the Bureau's creation, and would serve to abandon the country's most vulnerable consumers.

As a public servant elected to protect the interests of San Franciscans and who also has the authority under state law to act on behalf of California consumers, I am deeply concerned that you have not initiated a single enforcement action or new investigation since you assumed the role of acting director.¹ If this reduction in enforcement signals a shift in the Bureau's priorities, it ignores the serious and recent history that propelled the Bureau's creation. It was just ten years ago that our country was rocked by a seismic financial crisis. By 2008, millions of everyday Americans had fallen through a federal consumer financial regulatory structure rife with cracks.² They lost their homes, their livelihoods, and their chances to secure a brighter future for their children.

State and local governments moved quickly to help stem these losses for their residents, and agencies like my office have worked hard to hold bad actors responsible. But recognizing the need for national leadership and systemic reform, Congress passed the Consumer Financial Protection Act and authorized the Bureau to implement it. In doing so, Congress sought to forge a stronger foundation of economic security insulated from shifting political winds, so that the federal government would not again fail to protect its hardworking constituents.³

¹Matt Egan, "Trump official denies he is trying to destroy the CFPB," Apr. 11, 2018, CNN, available at <http://money.cnn.com/2018/04/11/investing/mulvaney-cfpb-hearing/index.html>.

² Christopher S. Peterson, *Consumer Financial Protection Bureau Law Enforcement: An Empirical Review*, 90 TULANE L. REV. 1057, 1066 (2016).

³ See Democratic Staff of the Committee on Financial Services, *The Consumer Financial Protection Bureau in Perspective*, July 21, 2017, available at https://democrats-financialservices.house.gov/uploadedfiles/cfpb_staff_report.pdf.

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Once established, the Bureau quickly demonstrated dexterity in realizing this vision. Bureau enforcement actions have secured roughly \$11.5 billion in relief for millions of consumers.⁴ And in its first four years, the Bureau did not lose a single of its 122 publicly announced enforcement actions.⁵ This leadership has afforded consumers a central and reliable point of contact to lodge complaints, receive information, and seek redress. It also has provided other federal, state, and local regulators with a powerful partner.

Yet your tenure has marked a swift and deliberate abandonment of this tried and true system.⁶ Your calculated underenforcement of federal consumer protection laws against unlawful and deceptive business practices flies in the face of the vast and seems to contradict this important statutory mandate that Congress has placed on the Bureau.⁷ It also jeopardizes the financial security of California consumers and the efficacy of other regulators.

I express here these overarching and grave concerns regarding the central role of Bureau enforcement in consumer safety because a commitment to fair and full enforcement of the law is the crux of an effective regulatory ecosystem. I am reminded of this every day in my work on behalf of San Franciscans. Consumers will only continue to bring information to a Bureau that is responsive and proactive; they will only trust information disseminated by a Bureau that gets results. By the same token, companies will only respect and comply with rules promulgated by a Bureau that carries out its mandate in full; they will only respect a Bureau that approaches its regulatory function in a balanced and responsible way while respecting the valuable role of business in our economy.

Your request for information seeks input on discrete topics. As such, I limit the remainder of my comments to the last two of the seven issues you articulate: the Bureau's standard consent order provisions, and its role in coordinating enforcement activity with other regulators.

THE STANDARD PROVISIONS IN BUREAU CONSENT ORDERS, INCLUDING CONDUCT, COMPLIANCE, MONETARY RELIEF, AND ADMINISTRATIVE PROVISIONS (ISSUE NO. 6)

Each of these consent order components is necessary to ensure redress and systemic reform for the unlawful and deceptive practices the Bureau's enforcement activity has historically targeted. Among other things, Bureau consent orders have effectively signaled to industry players the costs of predatory and unlawful practices, while also articulating the standards against which the violator and all others in the playing field will be measured.

Consent orders play a unique role in effective enforcement, because they can demand more sweeping and specific conduct reforms than most judgments in actions brought by state or local regulators alone. They are an extraordinary tool which the Bureau has used judiciously and consistently to address the most egregious and pernicious conduct. Consent orders can also result in higher civil penalties and restitution for more victims, not to mention complementary penalties that further the goal of deterrence. In addition, the Bureau's express statutory authority to coordinate with other regulators allows it to help craft a single, coherent framework for systemic redress—benefiting both regulated companies and consumers nationwide.

⁴ Fact Sheet, Consumer Financial Protection Bureau, "Consumer Financial Protection Bureau: By the numbers," July 2017, available at https://files.consumerfinance.gov/f/documents/201701_cfpb_CFPB-By-the-Numbers-Factsheet.pdf.

⁵ Peterson, *supra* note 2 at 1093.

⁶ Glen Thrush and Allen Rappoport, "How Mick Mulvaney Found Plenty to Target at Consumer Bureau," N.Y. Times, May 7, 2018, available at <https://www.nytimes.com/2018/05/07/us/mick-mulvaney-budget-director-consumer-bureau.html>.

⁷ See generally, Consumer Financial Protection Act, 12 U.S.C. §§ 5481-5603 (2010).

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Moreover, consent orders and related public information efforts are critical to ensuring consumer awareness, both of the standards with which companies must comply and relief to which they may be entitled. A recent survey of consumer protection advocates revealed that 72% had relied on information in consent orders to assist consumers.⁸

I applaud the comprehensive terms of consent orders that the Bureau has issued to date, and recommend the following, in relation to specific standard consent order provisions:

Compliance Provisions and Corporate Reform: To the extent possible in each case, the Bureau should consider all available and appropriate options when mandating reforms, including a demand that the Board of Directors assume direct responsibility for seeing that the company, and any subsidiaries, fully carry out the terms of the consent order.

Compliance Program Requirements: Through supervision, the Bureau can ensure that these companies reform their unlawful practices in the first place, but requiring the development of a robust compliance plan that includes periodic reporting to the Bureau is a relatively low cost-high reward way to address structural failings.

Monetary relief: To preserve the deterrent effects of civil penalties and maximize restitution, the Bureau should ensure that companies are not able to claim that payments to the Bureau offset the penalties that companies must pay in enforcement actions brought by other regulators (or vice versa).

The Bureau has been tremendously effective at policing wrongdoing through the standard provisions included in its consent orders. Any significant curtailment of these practices would be unjustified.

THE MANNER AND EXTENT TO WHICH THE BUREAU CAN AND SHOULD COORDINATE ITS ENFORCEMENT ACTIVITY WITH OTHER FEDERAL AND/OR STATE AGENCIES THAT MAY HAVE OVERLAPPING JURISDICTION (ISSUE NO. 7)

As you have acknowledged,⁹ state and local regulators play a crucial role in consumer safety, as do the Bureau's sister federal agencies. The San Francisco City Attorney's Office is vested by California's Unfair Competition Law with the authority to bring suit on behalf of the people of California to remedy unlawful, fraudulent and unfair business practices throughout the state. San Francisco is one of only a few city attorney's offices granted, by a 2004 voter initiative, with that authority. I take seriously the responsibility to put it to work.

During my tenure, the San Francisco City Attorney's Office has recovered millions for Californians in successful battles against unlawful business practices that include price-fixing, illegal marketing, credit card collections arbitration scams, payday lending, and more. These victories have also secured injunctive relief to protect consumers from these practices in the future.

⁸ Press Release, National Association of Consumer Advocates, "Survey: Advocates Reflect on CFPB's Role in Achieving Justice for Consumers," Feb. 8, 2018, available at <https://www.consumeradvocates.org/media/press-release/survey-advocates-reflect-cfpbs-role-achieving-justice-for-consumers>.

⁹ Rachel Witkowski, "AGs, not CFPB, should take greater role on enforcement: Mulvaney," American Banker, Feb. 28, 2018, available at <https://www.americanbanker.com/news/ags-not-cfpb-should-take-greater-role-on-enforcement-mulvaney>.

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Notwithstanding the important role that state and local regulators play, California consumers rely on the Bureau's full flex of its enforcement muscle in coordination with other agencies, for several key reasons.

1. State and local regulators do not have the jurisdiction, authority, or resources to supplant Bureau enforcement activity.

Congress deliberately penned a broad mandate for the Bureau, spanning implementation and enforcement of all consumer financial laws nationwide¹⁰ to remedy an otherwise fragmented and confusing patchwork of regulation rife with loopholes.¹¹ Congress also handed the Bureau the tools to pursue this mandate, such as the power to issue civil investigative demands that bring to light information crucial for enforcement and promote industry transparency. And Congress granted the Bureau the ability to conduct administrative adjudication proceedings that resolve them through consent orders, which as I have addressed, can be effectively tailored to achieve restitution, deterrence, and systemic corporate reform.¹²

For jurisdictions large and small, facing off against well-funded companies whose corporate misdeeds may take place in faraway locations or deeply hidden corners is a considerable feat—even when the injury in our own back yards is clear. And even the most comprehensive judgment issued in a state or local consumer lawsuit cannot redress harm or stem future misconduct on a national level. Put simply, we as regulators are most formidable, and most effective, when we work together.

2. As Bureau successes to date have demonstrated, consumer financial protection is best achieved through complementary and coordinated enforcement by multiple agencies.

One powerful example is the Bureau's 2016 Wells Fargo consent order, achieved as part of a joint effort with the Office of the Comptroller of the Currency (OCC) and the Los Angeles City Attorney, to settle allegations that the bank illegally opened consumer deposit and credit card accounts and enrolled consumers in online bank services. Together with these agencies, the Bureau exacted a \$185 million settlement package. The Bureau's consent order alone demanded \$100 million in penalties and focused on systemic nationwide reforms in company sales practices—including employee training, monitoring to detect sales integrity issues, policies and procedures to ensure consumer consent before any account is opened, and performance-management and sales goals geared to avoid incentives for improper sales practices.¹³ And the OCC exacted both \$35 million in civil penalties, and an enterprise-wide sales practices risk management and oversight program.¹⁴

In its follow-on efforts to secure compliance from Wells Fargo, San Francisco learned that statewide, 897,972 accounts opened were unauthorized or experienced simulated funding, and 53,337 of the accounts incurred fees. As of August 2017, Wells Fargo had provided \$36,596 in refunds to 1,374 accounts in San

¹⁰ 12 U.S.C. §§ 5491 *et seq.*

¹¹ See Democratic Staff of the Committee on Financial Services, *supra* note 3.

¹² 12 U.S.C. §§ 5562-5563.

¹³ *In the Matter of: Wells Fargo Bank, N.A.*, 2016-CFPB-0015, Sept. 8, 2016, available at http://files.consumerfinance.gov/f/documents/092016_cfpb_WFBconsentorder.pdf.

¹⁴ Press Release, Office of the Comptroller of the Currency, "OCC Assesses Penalty against Wells Fargo, Orders Restitution for Unsafe or Unsound Sales Practices," Sept. 8, 2016, available at <https://www.occ.gov/news-issuances/news-releases/2016/nr-occ-2016-106.html>.

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Francisco. The bank has, however, declined to disclose the total number of San Franciscans with unauthorized accounts.¹⁵

The Bureau's recent record \$1 billion penalty, achieved together with the OCC, against Wells Fargo for abuses that harmed mortgage and auto loan borrowers, is yet another example of effective coordination between federal agencies to hold large banks accountable.¹⁶

3. Because the Bureau is a coordinating agency by Congress's design, its dereliction of this statutory duty will leave other regulators disjointed.

Under its vast mandate to implement federal consumer financial laws, the Bureau was charged with a litany of unique enforcement-related responsibilities. For instance, Congress designated the Bureau to "coordinat[e] fair lending efforts . . . with other Federal agencies and State regulators, as appropriate, to promote consistent, efficient, and effective enforcement."¹⁷ No other federal agency operates with so clear a charge to engage in collaborative consumer protection, and it is a function on which the San Francisco City Attorney's Office and many sister agencies have come to rely.

4. As the Bureau serves as a clearinghouse that forwards complaints to other agencies, the efficacy of those agencies likewise stands to suffer.

As of June 2017, the Bureau had handled 159,158 complaints from Californians, with mortgage and debt collection among the top reported issues.¹⁸ And a snapshot from April 2016 showed that of all California complaints received to date, 13% came from the San Francisco-Oakland-Fremont area.¹⁹ These complaints are a crucial launching point for effective enforcement actions that lead to redress for those harmed, and improved industry standards that benefit everyone. Paired with the Bureau's unique authority to issue civil investigative demands,²⁰ and its practice of forwarding complaints beyond its jurisdiction to other agencies, consumer complaints lodged with the Bureau bring to light information that allow other regulators, including my office, to protect their constituents more effectively.

Further, the Bureau at one time reported that 97% of consumer complaints it forwarded to companies received a response within 15 days from those companies.²¹ If enforcement no longer looms as a realistic possibility, it seems unlikely that companies will feel compelled to be so responsive. And with minimal chance of a response, let alone redress, consumers might see no purpose in filing a complaint at all. I therefore recommend that the Bureau enhance its coordination with other Federal and State agencies as detailed below.

¹⁵ Memorandum from San Francisco Treasurer José Cisneros to Members of the San Francisco Board of Supervisors, Status Report as per Resolution No. 530-16 (Wells Fargo), Aug. 31, 2017, available at <http://sftreasurer.org/sites/default/files/8.31.17%20Treasurer%20Final%20Report%20to%20BOS%20re%20Wells%20Fargo.pdf>.

¹⁶ James Rufus Koren, "Wells Fargo to pay \$1 billion in fines over auto, mortgage lending abuses," L.A. Times, Apr. 20, 2018, available at <http://www.latimes.com/business/la-fi-wells-fargo-penalty-20180420-story.html>.

¹⁷ 12 U.S.C. § 5492.

¹⁸ Consumer Financial Protection Bureau, *Monthly Complaint Report Vol. 24*, June 2017, available at https://files.consumerfinance.gov/f/documents/201706_cfpb-Monthly-Complaint-Report-50-State.pdf.

¹⁹ Consumer Financial Protection Bureau, *Monthly Complaint Report Vol. 10*, Apr. 2016, available at https://files.consumerfinance.gov/f/documents/Monthly_Complaint_Report_-_April_2016.pdf.

²⁰ 12 U.S.C. § 5562(c).

²¹ Press Release, Consumer Financial Protection Bureau, "CFPB Releases State-Level Snapshot of Consumer Complaints," June 27, 2017, available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-releases-state-level-snapshot-consumer-complaints/>.

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5. The Bureau should establish a unit to coordinate with federal/state enforcement agencies and other regulators.

The Bureau could more effectively carry out its coordination responsibilities with a central point of contact for other regulators, and a clear process for initiating coordinated proceedings. While many agencies are repeat players alongside the Bureau and familiar with its processes, local regulators across the country could benefit from a clear pathway to working together with the Bureau to address consumer protection issues playing out in their respective jurisdictions—and, perhaps, in other locations around the country.

A dedicated unit could also facilitate collaborations amongst other regulators, by serving as the hub through which agencies can initiate common interest agreements with one another. All of this would decrease the cost of enforcement for all of the parties involved, and allow various agencies to contribute their respective areas of expertise and pockets of jurisdiction to the enforcement landscape.

6. The Bureau should widely promulgate details about existing coordination mechanisms.

While the Bureau has achieved impressive results through coordinated enforcement. But figuring out how to initiate common interest agreements and other information-sharing channels can be formidable and time-consuming. By freely providing this information, the Bureau would ensure that the parties understand exactly what is expected of them prior to the establishment of a relationship, and remain equally accessible to all potential enforcement partners.

7. The Bureau should increase the number of regional offices.

Additional regional offices would help state and local communities more easily interface with Bureau staff, expand opportunities for coordination, and enhance the Bureau's awareness of the challenges facing Americans throughout the country. Many issues related to consumer financial protection are national in scope. The Bureau's geographic reach should reflect as much.

In conclusion, a Bureau policy of inaction stands to embolden financial companies to take up dubious and unlawful practices, further augmenting the peril to consumers and the burden on state and local regulators. Evidence demonstrates that even in the face of significant enforcement, the financial industry has thrived. Banks' ability to make loans has not diminished, and the banking industry remains profitable. Indeed the banking industry posted an all-time record in profits of over \$171 billion in 2016.²² And at the close of 2017, federally insured banks had \$9.7 trillion of loans outstanding, a figure at or near its historical high point.²³

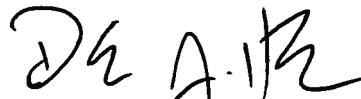
²² Ryan Tracy, "U.S. Banking Industry Annual Profit Hit Record in 2016," Wall Street Journal, Feb. 28, 2017, available at <https://www.wsj.com/articles/u-s-banking-industry-annual-profit-hit-record-in-2016-1488295836>.

²³ Federal Deposit Insurance Corporation, "Statistics at a Glance," Dec. 31, 2017, available at <https://www.fdic.gov/bank/statistical/stats/2017dec/industry.pdf>.

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I thus urge the Bureau to continue to fully enforce consumer financial laws in alignment with its statutory mandate, and in service of both the consumers it was charged to protect and the fellow regulators it was charged to rally. The Bureau should not betray its unassailable record and founding commitment to serve as a bastion of nonpartisan fairness and transparency for all Americans. Robust enforcement lies at the heart of that commitment.

Sincerely,

A handwritten signature in black ink, appearing to read "D.J. Herrera", written in a cursive style.

DENNIS J. HERRERA
City Attorney

