

United States House of Representatives
Committee on Financial Services
Washington, D.C. 20515

January 9, 2017

The Honorable Donald Trump
President-elect of the United States of America
Trump Tower
735 5th Avenue
New York, NY 10022

Dear President-elect Trump:

We write to you today to caution you against entering into a protracted – and likely unsuccessful – legal battle to oust Consumer Financial Protection Bureau (CFPB or Bureau) Director Richard Cordray from his role leading the Bureau before his term expires in July 2018. Since the founding of our republic, no President has ever removed an independent agency head for cause. Indeed, “for-cause removal” is an extraordinary remedy whose use must be subjected to enhanced congressional, judicial, and public scrutiny. While we understand that many powerful special interests would like to see Director Cordray leave, we urge you not to bow to their demands to initiate costly, meritless litigation, and we stand ready to oppose any efforts you may make to do so.

Director Cordray has served the public with distinction both before and during his tenure at the CFPB. As a clerk for United States Supreme Court Justices Byron White and Anthony Kennedy, a sole practitioner and of counsel to a top law firm, Ohio Solicitor General, Ohio Treasurer, and Ohio Attorney General, Mr. Cordray has devoted his career to protecting the interests of Main Street, even when it means standing up against powerful financial firms. For example, during his tenure as Ohio Attorney General – at a time when the state was home to many of the zip codes with the highest home repossession rates in the country – Mr. Cordray filed lawsuits against credit ratings agencies, subprime mortgage lenders and scam artists seeking to rip-off consumers facing foreclosure.¹

As Director of the Bureau, Mr. Cordray has continued his impressive record of taking on powerful special interests when they violate the law. To date, the CFPB has returned nearly \$12 billion to more than 27 million consumers harmed by illegal, predatory financial schemes.² Indeed, in the Bureau’s short five-year history, it has brought more than 100 cases against financial firms ranging from fraudulent debt collectors to payday lenders trapping borrowers in a cycle of debt.³ In September of last year, Director Cordray fined Wells Fargo more than \$100 million for covertly opening unwanted deposit and credit card accounts on behalf of

¹ Proress, Ben. “Wall Street’s Newest Regulator a Longtime Foe.” *New York Times*. July 18, 2011. Available at: http://dealbook.nytimes.com/2011/07/18/wall-streets-newest-regulator-a-longtime-foe/?_r=0

² Consumer Financial Protection Bureau: By the Numbers, dated July 2016. Available at: https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/07132016_cfpb_By_the_numbers_factsheet.pdf

³ Consumer Financial Protection Bureau: Enforcing Federal Consumer Protection Laws, dated July 2016. Available at: https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/07132016_cfpb_SEFL_anniversary_factsheet.pdf

unsuspecting consumers.⁴ As the Attorney for the City of Los Angeles has stated, this historic enforcement action against Wells Fargo would likely not have occurred without coordination and collaboration with the Bureau, under the leadership of Director Cordray.⁵

Director Cordray has likewise been sensitive to the needs of small and community financial institutions, making sure to tailor CFPB rulemakings in a manner that both facilitates lending and protects consumers from harm. For example, in September 2015, the Bureau adjusted its mortgage rules to better allow small and community financial institutions the opportunity to offer mortgages in rural and underserved areas, and gave small creditors time to adjust their business practices to comply with the rules.⁶ As a result, residential mortgage loan growth is strong, and smaller financial institutions' loan growth is outpacing that at larger banks.⁷

Finally, it is important to note that the CFPB is well on its way to completing rulemakings to both stop the payday lending debt trap and to rein in forced arbitration clauses that deny consumers their day in court. Any attempt to dismiss Director Cordray from his position at the Bureau should be seen as an effort to delay or otherwise thwart its important work to protect consumers in these areas and others.

Despite this clear record of achievement, the CFPB has its detractors. In 2014, opponents of the Bureau attempted to use a series of hearings in the Oversight and Investigations (OI) Subcommittee of the House Financial Services Committee (Committee) regarding allegations of discrimination at the Bureau to put the Bureau's mission and work into question. In response to these allegations, Director Cordray was upfront in acknowledging the challenges he faced in starting up a new federal agency, including dealing with staffing issues and developing a management structure from scratch, all while under pressure to successfully meet all the goals embodied in its vital mission to protect American consumers in the wake of the Great Recession.⁸

However, Director Cordray did not excuse or dismiss the allegations. In fact, he took affirmative and proactive steps to address these concerns by scrapping the existing performance management review system (PMR), reimbursing employees who had received ratings of "3" or "4" under that system, and changing the reporting structure for the Bureau's Director of the Office of Minority

⁴ Consumer Financial Protection Bureau Consent Order In the Matter of: Wells Fargo Bank, N.A., dated September 8, 2016. Available at: http://files.consumerfinance.gov/f/documents/092016_cfpb_WFBconsentorder.pdf

⁵ Written Statement of Los Angeles City Attorney Michael N. Feuer at the U.S. Senate Committee on Banking, Housing and Urban Affairs entitled, "An Examination of Wells Fargo's Unauthorized Accounts and the Regulatory Response" held on Thursday, September 20, 2016. Available at: <http://www.banking.senate.gov/public/index.cfm/hearings?ID=B80F9B81-4331-4F95-91BC-718288EC9DA0>

⁶ Consumer Financial Protection Bureau Finalizes Rule to Facilitate Access to Credit in Rural and Underserved Areas, dated September 21, 2015. Available at: <http://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-to-facilitate-access-to-credit-in-rural-and-underserved-areas/>

⁷ Federal Deposit Insurance Corporation: Quarterly Banking Profile, Third Quarter 2016, Vol. 10, No. 4. Available at: https://www.fdic.gov/bank/analytical/quarterly/2016_vol10_4/fdic_v10n4_3q16_quarterly.pdf

⁸ Written Statement of Director Cordray at the OI Subcommittee hearing entitled, "Allegations of Discrimination and Retaliation and the CFPB Management Culture" held on Wednesday, July 30, 2014. Available at: <http://financialservices.house.gov/uploadedfiles/hhrg-113-ba09-wstate-rcordray-20140730.pdf>

and Women Inclusion (OMWI), so that he reports directly to Director Cordray as a member of his management team.⁹

Director Cordray did not hide from the intense congressional scrutiny during this time. Instead, he pleaded to be given the chance to testify before the Committee to discuss the problems, measures that he had already taken to remedy them, and future initiatives that he intended to institute to promote a fair, diverse, and inclusive work environment at the Bureau.¹⁰

Despite partisan efforts to mischaracterize Director Cordray's leadership and management skills, the Bureau's policies and procedures for its employee complaint processes were found in 2015 by its Office of Inspector General (OIG) to provide its employees with the opportunity to have their complaints heard, investigated, and redressed in a fair and equitable manner.¹¹ In the CFPB's Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) Annual Report for Fiscal Year 2015, the Bureau underscored that it has completed or made progress on all of the OIG recommendations outlined in the earlier audit, including mandating diversity training and creating a Diversity and Inclusion Strategic Plan.¹²

In fact, the CFPB has become a leader among federal financial services agencies in addressing diversity within its ranks and correcting employment practices that could lead to biased outcomes. For example, a report by Committee Democratic staff (Staff Report) that was released by the Tri-Caucus (the combined Congressional Black, Hispanic, and Asian Pacific American Caucuses) in 2015, compared workforce diversity among all of the Federal financial services regulators. Among other things, the report found statistically significant differences in PMRs for minority employees and white employees. Specifically, in more than half of the agencies studied, African-American employees consistently received lower PMR scores than their white colleagues. Hispanic employees received lower PMR scores in four out of seven of these agencies.¹³ Despite these potential widespread problems at all agencies with their PMR systems, the staff report found that *only the CFPB* was willing to evaluate its PMR program, end its use when deficiencies were found, and reimburse its affected employees.¹⁴

Director Cordray's ability to successfully promote equal employment opportunities, and not just give lip service to the importance of diversity and inclusion, is also evidenced in the growing

⁹ *Id*

¹⁰ Letter from Director Cordray to OI Subcommittee Chairman Patrick McHenry, dated April 15, 2014, indicating that he is prepared to come before the Subcommittee to answer any questions about the Bureau's personnel matters at the Subcommittee's earliest convenience and welcomes the discussion of these issues; and letter from Director Cordray to OI Subcommittee Chairman Patrick McHenry, dated July 24, 2014, agreeing to accommodate the short notice provided to him to appear before the Subcommittee.

¹¹ OIG Audit Report entitled, "The CFPB Can Enhance Its Diversity and Inclusion Efforts," Report Number 2015-MO-C-002, dated March 4, 2015, at page 40. Available at: <https://oig.federalreserve.gov/reports/cfpb-diversity-inclusion-mar2015.htm>

¹² CFPB's No FEAR Act Annual Report for Fiscal Year 2015, dated April 1, 2016, at page 25. Available at: <http://www.consumerfinance.gov/data-research/research-reports/no-fear-act-annual-report-fiscal-year-2015/>

¹³ House Financial Services Committee Democratic Staff Report entitled, "The Dodd-Frank Act Five Years Later: Diversity in the Financial Services Agencies," dated November 5, 2015, at page 11. Available at: http://democrats.financialservices.house.gov/uploadedfiles/fsc_dems_-_staff_report_-_dodd-frank_five_years_later_-_diversity_in_the_financial_services_agencies_-_final.pdf

¹⁴ *Id*, at pages 17-18.

diversity of the Bureau's workforce. According to its annual OMWI report, in 2015, the CFPB increased the representation of women by 6 percent and increased Black/African-American and employees that are two or more races by 1 percent.¹⁵ When considering the annual reports from all of the OMWIs at federal financial services agencies, the CFPB is now tied with the FHFA for having the greatest percentage of executive managers that are racial or ethnic minorities.¹⁶

It's clear to us that Director Cordray has made significant strides in upholding our nation's consumer protection laws and managing the complicated issues of diversity and inclusion at his agency. He has done this despite repeated attempts by special interests to undermine, rollback, and limit his work and authority.

No President has ever removed a head of an independent agency for cause. Any attempts to remove Director Cordray from his position are without historical precedent, and intended solely to distract the Director and the Bureau from its important work protecting servicemembers, students and other borrowers from financial predation. We caution you not to engage in partisan litigation, particularly since it is likely to be unsuccessful and will needlessly divert government resources away from other important priorities.

Sincerely,



The Honorable Maxine Waters



The Honorable Carolyn B. Maloney



The Honorable Nydia M. Velázquez



The Honorable Brad Sherman

¹⁵ CFPB's Office of Minority and Women Inclusion Annual Report for 2015, dated March 2016, at page 31.

Available at: <http://www.consumerfinance.gov/data-research/research-reports/2015-office-minority-and-women-inclusion-annual-report-congress/>

¹⁶ Analysis of Annual Reports for 2015 from federal financial services agencies' Offices of Minority and Women Inclusion. See CFPB report, at page 15. Available at: http://files.consumerfinance.gov/f/201604_cfpb_office-of-minority-and-women-inclusion.pdf; see Federal Deposit Insurance Corporation report, at page 18. Available at: https://www.fdic.gov/about/diversity/rtc_3_29_16.pdf; see Office of the Comptroller of the Currency report, at page 51. Available at: <https://www.occ.gov/about/who-we-are/occ-for-you/diversity-and-inclusion-programs/omwi/fy-2015-omwi-dodd-frank-section-342-annual-report.pdf>; see National Credit Union Administration report, page 18. Available at: <https://www.ncua.gov/About/leadership/Pages/minority-women-inclusion/documents/2015-omwi-congressional-report.pdf>; see Board of Governors of the Federal Reserve System report, at page 4. Available at: <https://www.federalreserve.gov/publications/minority-women-inclusion/2016-employment.htm>; see Securities and Exchange Commission report, at page 45. Available at: <https://www.sec.gov/omwi/reportspubs/annual-reports/SEC-OMWI-FY-2015-Annual-Report-to-Congress-508-FV.pdf>; see Federal Housing Finance Agency report, at page 9. Available at: <https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/OMWI-Annual-Report-2015.pdf>.

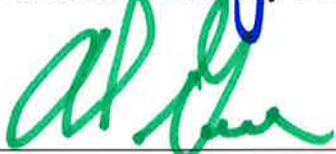
January 9, 2017



The Honorable Gregory W. Meeks



The Honorable Wm. Lacy Clay, Jr.



The Honorable Al Green



The Honorable Gwen Moore



The Honorable Ed Perlmutter



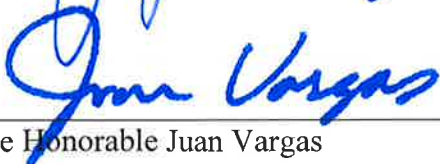
The Honorable Terri A. Sewell



The Honorable Dan T. Kildee



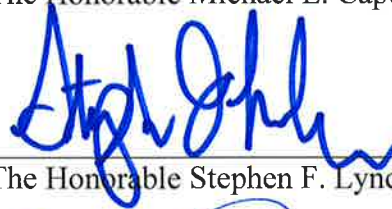
The Honorable Joyce Beatty



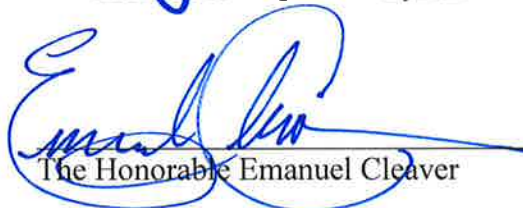
The Honorable Juan Vargas



The Honorable Michael E. Capuano



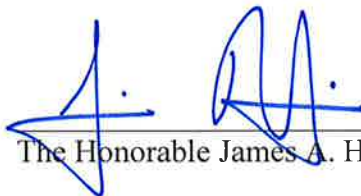
The Honorable Stephen F. Lynch



The Honorable Emanuel Cleaver



The Honorable Keith Ellison



The Honorable James A. Himes



The Honorable Bill Foster



The Honorable John K. Delaney



The Honorable Denny Heck