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United States Senate

COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

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April 7, 2020

The Honorable Kathleen L. Kraninger
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Dear Director Kraninger:

We write with serious concern regarding the Consumer Financial Protection Bureau's (CFPB) recent steps to rollback protections for consumers during the novel coronavirus-19 (COVID-19) pandemic. We urge you to reverse course and instead utilize the full scope of the CFPB's expertise, resources, and supervisory and regulatory authority to provide meaningful relief for consumers.

In the wake of the 2008 financial crisis, Congress created the CFPB to protect hardworking families from abuse and exploitation by Wall Street banks, payday lenders, and other corporations that prey for profit. As a result of the COVID-19 pandemic, our country is now experiencing economic shock, dislocation, and record unemployment, as companies have announced layoffs, many small businesses are unable to make payroll, and part-time, seasonal, and gig work has dried up. In just the past two weeks, a record 10 million American workers—a staggering figure—filed new claims for unemployment.¹

In the face of this pandemic, the CFPB is needed now more than ever to protect and mitigate the financial harm being inflicted on American families. To date, though, the CFPB's response has been tepid and ineffectual at best. At the outset of the COVID-19 outbreak, for example, the CFPB rolled out a "Start Small, Save Up" initiative to encourage consumers to have emergency savings accounts.² It is misguided to suggest that the problems confronting millions of American households—especially those who have lost their jobs—can be fixed if they just put away a few extra dollars each paycheck. Since then, the CFPB's assistance for consumers has been limited to a webpage with links to a handful of "financial resources for consumers."³

Instead of taking bold action to protect consumers, the CFPB under your leadership has used this pandemic as an opportunity to protect big banks, payday lenders, debt collectors, and other corporate interests. On March 26, the CFPB issued guidance that "encourages" banks and credit

¹ See <https://www.washingtonpost.com/business/2020/04/02/jobless-march-coronavirus/>.

² See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-start-small-save-initiative/>.

³ See <https://www.consumerfinance.gov/coronavirus/#consumer>.

unions to issue small dollar loans to consumers.⁴ But by failing to include any limitations on what interest rate that can be charged or require that consumers be able to repay the loan, this guidance opens the door for banks and credit unions to offer predatory payday loans that trap consumers into cycles of debt.⁵

That same day, in another favor to banks, credit card companies, and other corporations, the CFPB announced additional regulatory rollbacks:

- The CFPB waived the requirement, under the Home Mortgage Disclosure Act and Regulation C, that mortgage lenders provided quarterly reporting of data that shows whether they are complying with anti-discrimination laws;
- The CFPB postponed a rulemaking to collect data to ensure banks are not discriminating in making loans to women- and minority-owned small businesses; and
- The CFPB waived the requirement, under the Truth in Lending Act, Regulation Z, and Regulation E, that credit card and prepaid card companies submit information relating to their terms and price, as well as their agreements with institutions of higher education.⁶

The CFPB's assault on consumer protections continued with the April 1 announcement that the agency will not punish banks, debt collectors, payday lenders, consumer reporting companies, and other corporations that violate consumers' rights under the Fair Credit Reporting Act (FCRA).⁷ Under that law, consumers have a right to dispute inaccurate information on their credit reports, and lenders and the consumer reporting companies have to investigate and respond to those disputes within 30 days.⁸ Despite this requirement, the CFPB announced that it would not hold companies' failure to meet the statutory deadlines against them in a CFPB examination or enforcement action.⁹ In other words, despite touting the importance that "lenders report accurate information,"¹⁰ about consumers, the CFPB is letting those same lenders get away with not fixing their mistakes, with no regard to the harm to consumers.

The CFPB has also failed to provide the assistance and relief that homeowners suffering financial hardship need during this crisis. While the CFPB provided some information about forbearance under the CARES Act,¹¹ those resources fail to explain borrowers' other rights under existing servicing rules and offer no help to consumers from the CFPB. Rather than stepping in

⁴ See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-provides-flexibility-during-covid-19-pandemic/>.

⁵ See also April 6, 2020 Letter from Sen. Durbin and Sen. Brown to K. Kraninger regarding small dollar loan guidance.

⁶ See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-provides-flexibility-during-covid-19-pandemic/>.

⁷ See <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-credit-reporting-guidance-during-covid-19-pandemic/>; https://files.consumerfinance.gov/f/documents/cfpb_credit-reporting-policy-statement_cares-act_2020-04.pdf.

⁸ See 15 U.S.C. §§ 1681i(a)(1)(A), 1681s-2(a)(8).

⁹ See *supra* n. 7.

¹⁰ *Id.*

¹¹ See <https://www.consumerfinance.gov/about-us/blog/guide-coronavirus-mortgage-relief-options/>; see also <https://www.consumerfinance.gov/about-us/newsroom/cfpb-releases-video-how-mortgage-forbearance-works-under-cares-act/>.

to help servicers manage the burden of extremely high call volume by providing other consumer resources or disseminating servicers' policies, the CFPB joined the other financial regulators to weaken protections for homeowners unaware of their options to avoid default. This includes relaxing requirements that mortgage servicers contact borrowers who have fallen more than a month behind on their payments.¹² The decision also allows for unspecified delays in written acknowledgement of forbearance, other loss mitigation requests, or to respond to consumers who appeal if they are denied help with their mortgage could leave consumers in the dark for weeks or months at exactly the moment when they need information most.

Instead of helping struggling consumers through this crisis, the CFPB's guidance has actually *weakened* protections for consumers—enabling predatory lending, watering down fair lending laws, making it easier for lenders to get away with discrimination against women- and minority-owned small businesses, reducing timely communications with struggling homeowners, and making it easier for credit card and debit card companies rip off their customers. And the CFPB has compounded the harm to consumers by taking away their only recourse to ensure that their credit reports are accurate. Under any circumstances—but particularly during this economic crisis—this record can only be viewed as a neglect of your duty to protect consumers.

Instead of protecting corporations, the CFPB should be marshalling all of its expertise, resources, and authority to helping American families. Among other things, the CFPB should be conducting research on how the economic crisis is impacting consumers, analyzing consumer complaint data to guide allocation of resources, and redirecting supervisory efforts to ensuring that financial institutions have sufficient staff to handle the increases in customer calls and are actually helping their consumers.

In addition, we ask that the CFPB immediately take the following steps to protect consumers:

- To protect consumers' credit scores, the CFPB should:
 - Direct lenders to uniformly apply a disaster code on the account of any consumer experiencing economic hardship and ensure that the application of the disaster code prevents damage to consumer's credit score;¹³ and
 - Direct credit scoring companies to treat any account with a disaster code as credit neutral so that the placement of that code prevents lowering of the consumer's credit score.
- For unbanked consumers looking for an account to receive payments and protect against overdraft fees, the CFPB should provide advice on safe bank accounts or prepaid accounts in which to deposit those funds for later use.

¹² See <https://www.consumerfinance.gov/about-us/newsroom/federal-agencies-encourage-mortgage-servicers-work-struggling-homeowners-affected-covid-19/>.

¹³ See "Support Available During Coronavirus Response," Consumer Data Industry Association (Mar. 10, 2020), available at <https://www.cdiaonline.org/cdia-press-release-support-available-during-coronavirus-response/>; see also https://cdia-news.s3.amazonaws.com/CDIA+Disaster+Notice_3-9-2020.pdf.

- To protect consumers from companies that may use the pandemic to exploit or rip off consumers, the CFPB should issue guidance that it will consider certain acts and practices during the pandemic period as unfair, deceptive, or abusive, including:
 - Creditors or debt collectors that attempt to seize or garnish stimulus payments; and
 - Creditors or debt collectors that initiate or continue to pursue collection lawsuits, garnishments, or auto repossessions during the pandemic period when consumers cannot defend themselves.¹⁴
- To ensure that struggling homeowners have the information they need even as mortgage servicers experience heightened demand, the CFPB should require that servicers prioritize outreach to borrowers who fall behind well before initiating any foreclosure action and that borrowers receive timely written confirmation and terms of any forbearance or loss mitigation option.

There is still time to demonstrate leadership and issue guidance, policy statements, and use the full scope of the CFPB's regulatory and supervisory authority to direct financial institutions to help consumers. We urge you to shift course and return the CFPB to its core mission: protecting consumers.

Sincerely,

/s Sherrod Brown
 Sherrod Brown
 United States Senator

/s Brian Schatz
 Brian Schatz
 United States Senator

/s Chris Van Hollen
 Chris Van Hollen
 United States Senator

/s Elizabeth Warren
 Elizabeth Warren
 United States Senator

/s Jack Reed
 Jack Reed
 United States Senator

¹⁴ This is especially unfair and abusive where consumers cannot defend themselves because courts are closed or consumers cannot attend court or administrative hearings for health reasons or shelter-in-place orders.