



April 25, 2018

Sent to: [contact@gao.gov](mailto:contact@gao.gov)

The Honorable Gene L. Dodaro  
Comptroller General of the United States  
The United States Government Accountability Office  
441 G St., NW  
Washington, DC 20548

Dear Mr. Dodaro:

I am writing to ask that the Government Accountability Office (GAO) investigate the media report that Mick Mulvaney, the acting of the Consumer Financial Protection Bureau (CFPB) and the director of the Office of Management and Budget, urged industry officials at an American Bankers Association conference to contact Members of Congress and lobby them to take control of the CFPB by removing its funding through the Federal Reserve.<sup>1</sup> If that report is true, Mulvaney's actions appear to violate the ban on lobbying with appropriated funds and the Antideficiency Act.

The executive branch has an outsized influence on public opinion, which is why Congress has put in place a number of restrictions on the ability of federal agencies to influence the public. These provisions include the anti-lobbying law, which prohibits grassroots lobbying efforts with taxpayer funds to pressure Congress to support "any legislation or appropriation by Congress,"<sup>2</sup> and restrictions included in annual appropriations bills against using appropriated funds to support or oppose legislation pending before the Congress. While Mulvaney is free to express his opinions on annual appropriations through official communications with Congress, the GAO has

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<sup>1</sup> Glenn Thrush, "Mulvaney, Watchdog Bureau's Leader, Advises Bankers on Ways to Curtail Agency," *The New York Times*, April 24, 2018. <https://www.nytimes.com/2018/04/24/us/mulvaney-consumer-financial-protection-bureau.html> (Downloaded April 25, 2018)

<sup>2</sup> 18 U.S.C. § 1913 ("No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Member or official, at his request, or to Congress or such official, through the proper official channels, requests for any legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this section shall constitute violations of section 1352(a) of title 31.") <https://www.gpo.gov/fdsys/pkg/USCODE-2011-title18/pdf/USCODE-2011-title18-partI-chap93-sec1913.pdf>

consistently found that this stops short of a “clear appeal by an agency to the public to contact Members of Congress in support of, or in opposition to, pending legislation.”<sup>3</sup>

Currently, there are multiple pending bills in Congress that would either eliminate the CFPB or alter its funding sources,<sup>4</sup> which could undermine the independence and effectiveness of the agency.

I have previously testified before Congress that I believe the anti-lobbying restrictions are interpreted too narrowly,<sup>5</sup> but even with their relatively lax standard, we think that there has likely been a violation of law. Mulvaney’s reported remarks, along with his legislative proposals,<sup>6</sup> indicate a troubling coordinated campaign to engage in grassroots lobbying to gut the CFPB. Using appropriated funds for prohibited lobbying is a violation of law, the Antideficiency Act, and of the public trust.

Mulvaney’s reported appeal to the banking industry echoes previously exposed illegal efforts by the Department of Defense and defense contractors to influence Members of Congress on funding for the C-5B cargo plane.<sup>7</sup> As you are aware, in that case the GAO recommended the Justice Department investigate Air Force Office of Legislative Liaison Director Major General Guy Hecker, Assistant Secretary of Defense for Legislative Affairs Russell Rourke, Deputy Secretary of Defense Frank Carlucci, and Secretary of the Air Force Verne Orr for possible violations of the anti-lobbying law.<sup>8</sup>

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<sup>3</sup> Government Accountability Office, “Department of Housing and Urban Development--Anti-Lobbying Provisions,” September 9, 2014, p.4. <http://www.gao.gov/assets/670/665685.pdf>; Government Accountability Office, “Consumer Product Safety Commission—Prohibitions on Grassroots Lobbying and Publicity of Agenda,” November 8, 2012, p. 4. <http://www.gao.gov/assets/650/649995.pdf> (All downloaded April 25, 2018)

<sup>4</sup> H.R. 1031 (To eliminate the Bureau of Consumer Financial Protection by repealing title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, commonly known as the Consumer Financial Protection Act of 2010) <https://www.congress.gov/bill/115th-congress/house-bill/1031?q=%7B%22search%22%3A%5B%22%5C%22Consumer+Financial+Protection+Bureau%5C%22%22%5D%7D&r=1>; S. 365 (A bill to amend the Consumer Financial Protection Act of 2010 to remove the funding cap relating to the transfer of funds from the Board of Governors of the Federal Reserve System to the Bureau of Consumer Financial Protection, and for other purposes) <https://www.congress.gov/bill/115th-congress/senate-bill/365?q=%7B%22search%22%3A%5B%22%5C%22Consumer+Financial+Protection+Bureau%5C%22%22%5D%7D&r=2>; S. 387 (Consumer Financial Protection Bureau Accountability Act of 2017) <https://www.congress.gov/bill/115th-congress/senate-bill/387?q=%7B%22search%22%3A%5B%22%5C%22Consumer+Financial+Protection+Bureau%5C%22%22%5D%7D&r=3> (All downloaded April 25, 2018)

<sup>5</sup> “Testimony of POGO’s Danielle Brian before the Senate Democratic Policy Committee on Misuse of Federal Funds to Promote a Political Agenda,” January 28, 2005. <http://www.pogo.org/our-work/testimony/2005/gc-pol-20050128.html#sthash.kilPUvr7.dpuf>

<sup>6</sup> Recently, Mulvaney requested that Congress: “1. Fund the Bureau through Congressional appropriations; 2. Require legislative approval of major Bureau rules; 3. Ensure that the Director answers to the President in the exercise of executive authority; and 4. Create an independent Inspector General for the Bureau.” Bureau of Consumer Financial Protection, *Semi-Annual Report of the Bureau of Consumer Financial Protection*, Fall 2017, April 2018, p. 2. [https://files.consumerfinance.gov/f/documents/cfpb\\_semi-annual-report\\_spring-2018.pdf](https://files.consumerfinance.gov/f/documents/cfpb_semi-annual-report_spring-2018.pdf) (Downloaded April 25, 2018)

<sup>7</sup> Dina Rasor, *The Pentagon Underground*, 1985, pp. 241-259.

<sup>8</sup> Government Accounting Office, “Improper Lobbying Activities by the Department of Defense on the Proposed Procurement of the C-5B Aircraft,” September 29, 1982. <http://www.gao.gov/assets/210/205747.pdf> (Downloaded April 25, 2018); Dina Rasor, *The Pentagon Underground*, p. 257.

The CFPB and its mission must be free from improper manipulation and influence by executive branch officials calling on the public to lobby Congress. Thank you for your consideration of this request. Please contact me or POGO's General Counsel, Scott Amey, at 202-347-1122 if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Danielle Brian". The signature is written in a cursive, flowing style.

Danielle Brian  
Executive Director