

AFR Americans for Financial Reform

June 20, 2017

Dear Senator,

Americans for Financial Reform opposes the confirmation of Neomi Rao as Administrator of the Office of Information and Regulatory Affairs (OIRA). Professor Rao's announced views demonstrate an extreme disregard for the independence of financial regulatory agencies and an unwarranted hostility to critical financial protections.

The principal financial regulators are independent agencies.¹ Accordingly, under presidents of both parties, rulemakings by these financial regulators have been conducted by their Presidentially-appointed, Senate-confirmed heads—with the assistance of agencies' career subject-matter experts, but without substantive intervention by OIRA.²

This is sensible given that OIRA is poorly equipped to act as a super-regulatory agency with authority over the entire sweep of financial regulation. The office has only a few dozen employees covering all areas of the government who lack issue expertise in financial matters. By contrast, independent financial regulatory agencies collectively employ thousands of specialists. Moreover, independence of financial regulation from ordinary political influence is crucial to mitigate undue influence over regulatory decisions by private special interests. As a federal appellate judge recently observed, “there’s a pattern in the financial regulatory agencies of actually wanting to have some amount of separation [from the President] . . . to avoid financial cronyism in favor of faithful execution of the law.”³

Since 1935, the Supreme Court has protected Congress's prerogative to create such independent agencies.⁴ Despite this well-established law, Professor Rao has made clear that she believes

¹ See, e.g., 44 U.S.C. § 3502(5) (“‘independent regulatory agency’” includes “the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, . . . the Federal Deposit Insurance Corporation, . . . the Federal Housing Finance Agency, . . . the Federal Trade Commission, . . . the Securities and Exchange Commission, the Bureau of Consumer Financial Protection, the Office of Financial Research, [and the] Office of the Comptroller of the Currency”). This definition is incorporated into the executive orders that govern OIRA regulatory review. See, e.g., Exec. Order No. 12291, Fed. Reg. (Feb. 17, 1981); Exec. Order No. 12866, Regulatory Planning and Review (Oct. 4, 1993).

² Congressional Research Service, Independence of Federal Financial Regulators: Structure, Funding, and Other Issues ([R43391](#), Feb. 28, 2017), at 20-23; *Office of Information and Regulatory Affairs: Federal Regulations and Regulatory Reform Under the Obama Administration: Hearing Before the Subcomm. on Courts, Communal & Admin. Law of the H. Comm. On the Judiciary*, 112th Cong. 36-41 (2012) (statement of Sally Katzen) (“past presidents of both political parties have been reluctant to extend executive order requirements for economic analysis and centralized review by OIRA to the [independent agencies] out of deference to Congress”).

³ [Transcript of Oral Argument](#), *PHH Corp. v. CFPB*, No. 15-1177 (D.C. Cir. 2017), at 22.

⁴ *Humphrey's Executor v. United States*, 295 U.S. 602 (1935); *Wiener v. United States*, 357 U.S. 349 (1958); *Morrison v. Olson*, 487 U.S. 654 (1988).

agency independence is unconstitutional, regardless of Congress's statutory design.⁵ It is therefore reasonable to question whether she would adhere to these traditional limits on the OIRA Administrator, or properly advise the President regarding limits on his authority imposed by the other branches of government.

In addition, were OIRA to review rules promulgated by independent agencies using the same criteria as it does for other agencies, the Administrator of OIRA would exercise considerable discretion over financial regulatory rulemakings. Professor Rao's few announced views on financial regulatory matters are concerning. For example, her opposition to the CFPB's enforcement of the statutory prohibition on "abusive acts or practices," and skepticism of the CFPB undertaking its other statutory responsibilities, suggest antipathy to strong consumer protection.⁶ With little institutional or personal expertise in financial regulation, these ideological predispositions would be especially powerful drivers of OIRA decisionmaking under her leadership. These decisions will be critical given the Administration's announced intention to embrace industry priorities to deregulate Wall Street,⁷ and the Treasury Secretary's assertion that much of this agenda can be implemented administratively.⁸

For these reasons, we strongly urge the Senate to reject Professor Rao's nomination.

Sincerely,

Americans for Financial Reform

⁵ See Neomi Rao, *A Modest Proposal: Abolishing Agency Independence In Free Enterprise Fund v. PCAOB*, 79 FORDHAM L. REV. 102 (2011); *The Administrative State v. The Constitution: Dodd-Frank at Five Years: Hearing before the United States Senate Comm. on the Judiciary, Subcomm. on the Constitution* (2015) (statement of Neomi Rao).

⁶ [Statement of Neomi Rao](#), *The Administrative State v. The Constitution: Dodd-Frank at Five Years: Hearing before the United States Senate Comm. on the Judiciary, Subcomm. on the Constitution* (July 23, 2015).

⁷ Exec. Order No. 13772, 82 Fed. Reg. 9965 (Feb. 3, 2017); U.S. Department of Treasury, [A Financial System That Creates Economic Opportunities: Banks and Credit Unions](#) (June 2017).

⁸ *House Appropriations Subcomm. on Financial Services and General Government Holds Hearing on Treasury Department Fiscal 2018 Budget* (June 12, 2017).

Following are the partners of Americans for Financial Reform.

All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.

- AARP
- A New Way Forward
- AFL-CIO
- AFSCME
- Alliance For Justice
- American Income Life Insurance
- American Sustainable Business Council
- Americans for Democratic Action, Inc
- Americans United for Change
- Campaign for America’s Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Center for Effective Government
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Green America

- Greenlining Institute
- Good Business International
- Government Accountability Project
- HNMA Funding Company
- Home Actions
- Housing Counseling Services
- Home Defenders League
- Information Press
- Institute for Agriculture and Trade Policy
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women's Policy Research
- Krull & Company
- Laborers' International Union of North America
- Lawyers' Committee for Civil Rights Under Law
- Main Street Alliance
- Move On
- NAACP
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Council of Women's Organizations
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Resource Center
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Nurses United
- National People's Action
- National Urban League
- Next Step
- OpenTheGovernment.org
- Opportunity Finance Network
- Partners for the Common Good
- PICO National Network
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council

- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Fuel Savers Club
- The Leadership Conference on Civil and Human Rights
- The Seminal
- TICAS
- U.S. Public Interest Research Group
- UNITE HERE
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET
- Union Plus
- Unitarian Universalists for a Just Economic Community

List of State and Local Partners

- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans For Responsible Lending
- Association for Neighborhood and Housing Development NY
- Audubon Partnership for Economic Development LDC, New York NY
- BAC Funding Consortium Inc., Miami FL
- Beech Capital Venture Corporation, Philadelphia PA
- California PIRG
- California Reinvestment Coalition
- Century Housing Corporation, Culver City CA
- CHANGER NY
- Chautauqua Home Rehabilitation and Improvement Corporation, NY
- Chicago Community Loan Fund, Chicago IL
- Chicago Community Ventures, Chicago IL
- Chicago Consumer Coalition
- Citizen Potawatomi CDC, Shawnee OK
- Colorado PIRG

- Coalition on Homeless Housing in Ohio
- Community Capital Fund, Bridgeport CT
- Community Capital of Maryland, Baltimore MD
- Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ
- Community Redevelopment Loan and Investment Fund, Atlanta GA
- Community Reinvestment Association of North Carolina
- Community Resource Group, Fayetteville AR
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (NYC)
- Cooperative Fund of New England, Wilmington NC
- Corporacion de Desarrollo Economico de Ceiba, Ceiba PR
- Delta Foundation, Inc., Greenville MS
- Economic Opportunity Fund (EOF), Philadelphia PA
- Empire Justice Center NY
- Empowering and Strengthening Ohio's People (ESOP), Cleveland OH
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing
- Fitness and Praise Youth Development, Inc., Baton Rouge LA
- Florida Consumer Action Network
- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Illinois PIRG
- Impact Capital, Seattle WA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY
- La Casa Federal Credit Union, Newark NJ
- Low Income Investment Fund, San Francisco CA
- Long Island Housing Services NY
- MaineStream Finance, Bangor ME
- Maryland PIRG
- Massachusetts Consumers' Coalition
- MASSPIRG
- Massachusetts Fair Housing Center
- Michigan PIRG
- Midland Community Development Corporation, Midland TX

- Midwest Minnesota Community Development Corporation, Detroit Lakes MN
- Mile High Community Loan Fund, Denver CO
- Missouri PIRG
- Mortgage Recovery Service Center of L.A.
- Montana Community Development Corporation, Missoula MT
- Montana PIRG
- New Economy Project
- New Hampshire PIRG
- New Jersey Community Capital, Trenton NJ
- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG
- New York PIRG
- New York City Aids Housing Network
- New Yorkers for Responsible Lending
- NOAH Community Development Fund, Inc., Boston MA
- Nonprofit Finance Fund, New York NY
- Nonprofits Assistance Fund, Minneapolis MN
- North Carolina PIRG
- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG
- OligarchyUSA
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- Michigan PIRG
- Rocky Mountain Peace and Justice Center, CO
- Rhode Island PIRG
- Rural Community Assistance Corporation, West Sacramento CA
- Rural Organizing Project OR
- San Francisco Municipal Transportation Authority
- Seattle Economic Development Fund
- Community Capital Development
- TexPIRG
- The Fair Housing Council of Central New York
- The Loan Fund, Albuquerque NM
- Third Reconstruction Institute NC
- Vermont PIRG
- Village Capital Corporation, Cleveland OH
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty - Florida

- WashPIRG
- Westchester Residential Opportunities Inc.
- Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI
- WISPIRG

Small Businesses

- Blu
- Bowden-Gill Environmental
- Community MedPAC
- Diversified Environmental Planning
- Hayden & Craig, PLLC
- Mid City Animal Hospital, Phoenix AZ
- UNET