Kraninger Lets Industry "Drive the Agenda" at CFPB
Even During COVID-19 Pandemic

Kathleen Kraninger, the current director of the Consumer Financial Protection Bureau, told an audience of bankers at a November 2019 industry gathering that "you are really helping drive the agenda." Unfortunately for the public and for consumer financial protection, the Kraninger agenda and the Wall Street lobby's priorities are indeed all too similar, and that has proved true even during the COVID-19 pandemic and massive economic distress it has produced

After the Senate confirmed Kraninger on a party-line vote, she steered the CFPB in an anti-consumer direction, making it easier for Wall Street and predatory lenders to rip people off and to discriminate against people of color. In the first phase of its existence the CFPB was an effective enforcer, winning more than $12 billion in relief for consumers. Kraninger's CFPB eased up on prosecuting wrongdoing and companies are paying less restitution. Instead of writing new rules to address serious problems, the bureau under her leadership devoted resources to rolling back protections, and opening new avenues for consumer abuse

Then came the COVID-19 crisis. Kraninger did worse than miss the opportunity to use the CFPB's unique toolset to help people. She fell back on the industry-friendly canard that if regulators give companies flexibility, they will do right by consumers. This stance was not only wrong; it runs contrary to what Congress intended when it created the agency a decade ago.

The CFPB was set up because the financial crisis made devastatingly clear that without effective regulation, Wall Street will abuse individual consumers, and threaten financial stability for everyone. The CFPB's mission is to advocate for consumers by vigorously enforcing federal consumer protection laws and ensuring access to fair, competitive, and transparent markets.

The particulars:

Industry-Friendly COVID-19 Response Fails Consumers

Kraninger used the pandemic as a pretext to relax or remove consumer protections without evidence that doing so would either help consumers or be responsive to the legitimate COVID-related needs of financial institutions. She did not hide the fact that consumers were an afterthought. On June 30, the CFPB proclaimed that it was "prioritizing activities intended to protect the stability of the financial sector and enhance its recovery once the public health crisis has passed, as well as protecting consumer financial well-being during and after the COVID-19 emergency."

As former CFPB director Richard Cordray pointed out in a white paper calling out Kraninger's failures, this approach is exactly backwards. During the pandemic, the nation needs the CFPB to use all of its resources to address the financial disruption caused by the disease and to prevent the ensuing consumer financial crisis from spiraling out of control. Helping avoid foreclosures, preventing abusive debt collection, guarding against inaccurate and unfair credit reporting, and stopping predatory lending should have been the guiding principles of CFPB's response.

Kraninger's actions during the pandemic demonstrate her dedication to making markets less transparent, more prone to fraud, and less fair for consumers – all at a time of unprecedented economic crisis for the public the CFPB is supposed to protect.

- Instead of seeking out useful data on the impact of the pandemic, Kraninger relaxed reporting requirements for financial institutions, discouraged consumers from filing complaints with the CFPB, and halted ongoing efforts by the CFPB to get information about financial services markets. The Kraninger CFPB also began concealing the narratives of consumer complaints on its website, a step in the direction of longstanding industry efforts to undermine or eliminate the database , even as the number of complaints surged to record highs.
- At a time when millions of Americans were unable to make mortgage payments after pandemic-related measures knocked them out of work and people were contacting the CFPB to complain about their mortgage servicers, Kraninger announced the CFPB would give mortgage servicers a pass on complying with key mortgage rules, designed to protect homeowners struggling to make their payments.

- As Americans faced the threat of pandemic-related economic hardship permanently damaging credit reports, Kraninger chose to relax deadlines for creditors, credit bureaus, and debt collectors (who are now launching more and more lawsuits) to fix their own errors. Despite a 550 percent increase in complaints to CFPB about disputes with credit bureaus, Kraninger refused to reverse this policy.
- In easing mortgage disclosure rules and rules governing credit card disclosures, Kraninger cited the need for borrowers to access credit quickly. But the CFPB's own research—and the only pandemic-related research released to date by the CFPB--showed credit applications dropped dramatically in the first months of the pandemic.
- The CFPB waived rules on prepaid cards, ostensibly to speed pandemic relief payments. Months later, many people were nickel-and-dimed with fees to access their payments or check their balances. The cards also have forced arbitration clauses that deny consumers their day in court.
- During the pandemic, the agency also launched a program in which companies can seek exemptions from consumer protection laws. CFPB will provide these exemptions without public input.
- The Kraninger CFPB failed to use its authority under the Equal Credit Opportunity Act to ensure that small-business loans (the Paycheck Protection Program) were made on a non-discriminatory basis to Black and Brown business owners. Evidence shows that the loans did not go to these communities in anything close to equitable numbers, starving them of help when these communities were already hardest hit by COVID-19 as well as centuries of systemic discrimination and disinvestment.

Gutting Payday Protections

Kraninger invested scarce resources in gutting a crucial rule that was set to protect consumers from predatory payday and car-title loans by requiring lenders to verify a borrower's ability to repay before extending credit. These loans have interest rates of over 300 percent, and trap borrowers in a cycle of debt, in which they owe more and more every month; 8 in 10 payday loans goes to pay off another payday loan. The Kraninger proposal came after intense pressure from payday lenders, who have openly admitted they rely on contributions to Trump's campaign to advance their agenda, and who hired a close friend of Mick

Mulvaney, Kraninger's political patron, to lobby for changes. *The New York Times* published a detailed memo documenting how CFPB political appointees manipulated research and used "statistical gimmicks" to downplay harm to consumers from eliminating these protections.

Helping Debt Collectors Abuse and Harass

Under Kraninger, the CFPB has proposed a regulation that would make the already serious problems of abuse and harassment by debt collectors even worse. She wants to allow debt collectors to send unlimited emails and text messages, along with up to 7 phone contacts per debt, per week. Kraninger also wants to make it easier for collectors to seek payment of debt that is outside the legal statute of limitations and is moving ahead with new disclosures that would enable them.

Disappearing Fair Lending Cases

Since the previous confirmed director departed, CFPB has referred only two cases on fair lending to the Department of Justice, despite ample evidence that lending discrimination is a continuing problem. Even industry lawyers admit that CFPB supervision of companies under the Equal Credit Opportunity Act has seen a "substantial drop-off" and what little remains reflects actions started long before Kraninger arrived. GAO has opened an investigation into the effectiveness of CFPB's oversight and enforcement of fair lending cases.

Decline of Enforcement and Restitution

Public enforcement actions significantly decreased – by 80 percent from 2015 to 2018 – under this CFPB compared to when Cordray led the agency. This reality makes it easier for companies to break the law, knowing the likelihood of getting caught and called out has fallen dramatically. In at least one case, Kraninger denied the restitution recommended by career staff. CFPB did not obtain any relief for homeowners in its case against Harbour Portfolio, a notorious predatory lender, in contrast to cases brought by the City of Cincinnati and private plaintiffs that included direct financial compensation for harmed consumers and municipalities.

Even including a single large settlement with Equifax for about $520 million, the total amount of restitution Kraninger got is about a quarter of what the Cordray CFPB averaged over any two-year span during his tenure. During the pandemic, CFPB has assessed unusually low penalties in enforcement cases, often knocking them down based on a defendant's plea of penury.

About-Face on CFPB Constitutionality

The financial services lobby has repeatedly sought to undermine the independence and efficiency of the CFPB, including by seeking legislation to turn it into a commission, or by challenging the constitutionality of its structure in court. In several congressional hearings, Kraninger maintained that it was not her place to comment on the constitutionality of the CFPB. Then a case brought by a debt collector challenging the CFPB's authority in an enforcement action arrived at the Supreme Court, and Kraninger took the position that the bureau's for-cause removal clause is unconstitutional. The Supreme Court ultimately found in favor of the industry on that point.

Staffing Decisions that Weaken Agency Mission

Eric Blankenstein, a former CFPB official and now at the Department of Housing and Urban Development, was found to have authored several racist blogs but was allowed to keep his job, even though an inspector general report found he may have abused his authority. Paul Watkins, another CFPB official (who announced plans to depart in August), was previously employed by an organization that advocated against rights for the LGBTQ community. A hiring freeze not driven by budget necessity contributed to a 15 percent drop in staffing, even as Kraninger used over-worked employees as an excuse for not advancing consumer protection activities. The hiring freeze was lifted after more than a year, but staffing remains down, and some positions have been left unfilled.

Evading Requirements to Protect Servicemembers

Kraninger insists that CFPB does not have the authority to examine payday lenders, banks, and other institutions for compliance with the Military Lending Act, a 2007 law that imposed a 36 percent interest rate cap on loans to active-duty servicemembers. The decision "baffled" the Pentagon and drew opposition from major servicemember groups. No lender ever challenged CFPB's authority on this point. The only undisputed fact: Kraninger refuses to protect servicemembers.

Packing Advisory Bodies with Industry Advocates

After the dissolution of the Consumer Advisory Board by interim CFPB head Mick Mulvaney, Kraninger waited until September 2019 to reconstitute this body, whose existence is mandated under Dodd-Frank. At the start of 2020, Kraninger launched a new five-person "taskforce" on federal consumer financial protection law that will be headed by Todd Zywicki, a longtime financial services industry advocate and opponent of CFPB's existence who works for the Mercatus Center, a body partially funded by the billionaire Koch family. Other members of this new body include an attorney for auto dealers and a lawyer who defended payday lenders. No one put on the task force has a history of advocating for the public interest; the CFPB rejected well-respected academics and experts who do fit that profile. CPFB may pay Zywicki over $200,000 for less than a year's work running the panel. The panel's opaque operating rules are now the subject of litigation.

Suspending Consumer Protections

In the name of serving "innovation," a trendy but vague label, the CFPB is offering exemptions from federal law for potentially dangerous products. Kraninger's "sandbox" and no-action letters policies permit financial technology companies to dodge vital consumer protections that they would otherwise have to follow. And the process will occur in secret, without the public knowing what companies are seeking exceptions to the rules, or for what activities. *Anyone* can apply for these exemptions, even if there is *nothing* particularly innovative about the project or product at all.

Neglecting Student Loan Borrowers and Ignoring the Student Debt Crisis

Kraninger has been all but silent on the student debt crisis. The student debt load surpassed $1.6 trillion in 2019, and abuses by private servicers – which the CFPB Is charged with regulating – are rampant. But Kraninger's CFPB has completely abandoned oversight of student loan servicers, giving companies free rein to rip off borrowers in a market in which millions of peoples economic security is at stake and racial discrimination is a serious risk. She also left the position of Student Loan Ombudsman – tasked with overseeing the student lending market – open for an entire year. When she did appoint someone, it was an industry veteran with a track record of perpetuating abuses.

Cutting Back on Data to Identify Discrimination

The Home Mortgage Disclosure Act requires lenders to report mortgage lending data, so that regulators and the public can see who is getting loans, and who is not, and at what cost. In response to the abusive lending at the heart of the financial crisis, Congress beefed up what information is required, and the previous CFPB wrote a rule implementing these enhancements. But Kraninger proposed to revisit those rules, before the first data had even been made public, and without any factual or legal basis for why that was necessary. In addition, Kraninger raised the thresholds for HMDA reporting, exempting permanently thousands of mortgage lenders from reporting data that has been continuously collected and made public since the 1970s. That move is now the subject of a lawsuit.

Dismantling Effective Fair Lending Office

Kraninger followed the lead of Mulvaney in overseeing the dissolution of the Office of Fair Lending and Equal Opportunity, a groundbreaking unit within CFPB that harnessed the different dimensions of the agency's work (research, supervision, public engagement) to fight discrimination in lending. She refused entreaties from senators to reverse this destructive decision, which became final early in her tenure. The resulting turmoil led to staff departures, further weakening efforts to fulfill the anti-discrimination mission Congress gave CFPB.

Consumer Financial Education Bureau?

Consumers should have the right information when making financial decisions. But Kraninger's overemphasis on this function ignores the CFPB's role as an enforcer and regulator in favor of handing out pamphlets and warning emails. As one expert put it, Kraninger is expecting consumers to figure out how to purify their own water since she is dismantling water purification plants. Even as Kraninger promotes consumer education ahead of enforcement and supervision, CFPB has seen no increase in funding for work on consumer understanding of financial products or other major new initiatives in this area.

Watered Down "Abusive" Standard

Congress gave the CFPB the power to address actions that are "abusive" to consumers, in addition to those that are unfair or deceptive, which is an important additional tool to help the agency respond effectively to changing industry practices that harm individuals and communities. Despite the CFPB's limited use of this standard, big banks and predatory lenders have complained loudly about this consumer protection enhancement. In January, responding to industry requests, Kraninger announced severe restrictions on the agencies use of this new power, essentially choosing to put away a tool that Congress told them to use to police industry wrongdoing.

Abandoned Work on Overdraft Protection

Kraninger followed Mulvaney's lead in abandoning existing work on overdraft fees, an abuse that cost American consumers $11 billion last year. Overdraft fees are out of proportion to the costs for banks and often lead to closed checking accounts, damaged credit scores, and loss of access to the banking system. Relief from overdraft fees is particularly essential during the pandemic.

Dragged Feet on Small-Business Lending

Kraninger initially abandoned a project required by law almost 10 years ago to collect and release data on access to credit by small businesses, including women- and minority-owned firms. Despite having the bandwidth to repeal existing consumer protections, she argued CFPB did not have the staffing to complete this project. In time, a lawsuit brought by public interest groups forced her hand, resulting in a court-mandated implementation timeline. But, as mentioned above, she used the pandemic as a pretext to stop preliminary work on this rulemaking once again.