

November 29, 2017

**BY FAX**

Honorable Ron Johnson, Chair  
Honorable Claire McCaskill, Ranking Member  
Senate Committee on Homeland Security and Governmental Affairs  
340 Dirksen Senate Office Building  
Washington, DC, 20510

Honorable Trey Gowdy, Chair  
Honorable Elijah Cummings, Ranking Member  
House Committee on Oversight and Government Reform  
2157 Rayburn House Office Building  
Washington, D.C. 20515

**Re: Violations of the Anti-deficiency Act by OMB Director Mulvaney**

Dear Chairman Johnson, Ranking Member McCaskill, Chairman Gowdy, Ranking Member Cummings:

Campaign for Accountability (“CfA”) respectfully requests that you investigate whether Office of Management and Budget (“OMB”) Director Mick Mulvaney has and is violating the Anti-deficiency Act by directing OMB staff to work on behalf of the Consumer Financial Protection Bureau (“CFPB”).

**Background**

On November 24, 2017, Richard Cordray resigned as Director of the CFPB. Before leaving office, Mr. Cordray appointed Leandra English to lead the bureau.<sup>1</sup> Soon after learning of Mr. Cordray’s departure, President Trump rushed to name OMB Director Mick Mulvaney to serve as acting director of the CFPB until a permanent replacement can be confirmed by the Senate.<sup>2</sup> Following Mr. Mulvaney’s appointment, Ms. English filed a lawsuit in the District of Columbia U.S. District Court contesting Mr. Mulvaney’s appointment.<sup>3</sup> On November 28, 2017, a district court judge denied Ms. English’s request for a temporary restraining order to prevent

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<sup>1</sup> Renae Merle, Leandra English, the Woman at the Center of a White House Battle for Control of the CFPB, Files Lawsuit Against Trump Pick to Lead Watchdog Agency, *Washington Post*, November 26, 2017, available at <https://www.washingtonpost.com/news/business/wp/2017/11/26/who-is-leandra-english-the-woman-at-the-center-of-a-white-house-battle-for-control-of-the-cfpb/>.

<sup>2</sup> Camila Domonoske, Mulvaney Shows Up For Work At Consumer Watchdog Group. As Leadership Feud Deepens, *NPR*, November 27, 2017, available at <https://www.npr.org/sections/thetwo-way/2017/11/27/566662797/lawsuit-filed-to-block-white-house-appointment-to-head-consumer-watchdog>.

<sup>3</sup> *Id.*

Mr. Mulvaney's appointment. Ms. English plans to appeal.<sup>4</sup> Both Ms. English and Mr. Mulvaney are asserting control, leading to confusion as to who is really in charge of the CFPB.

Regardless of the CFPB's leadership, on November 27, 2017, Peter Schroeder of *Reuters* reported that CFPB press staff were directing reporters to contact OMB press staff for inquiries about the CFPB.<sup>5</sup> Similarly, National Public Radio reported that CFPB press inquiries were being directed to OMB Communications Director John Czwartacki, who works for Mr. Mulvaney.<sup>6</sup> Given that Mr. Mulvaney now believes himself to be wearing two hats, he also may be relying on other OMB staff members to assist him with CFPB business.

### **Potential Violation of the Anti-deficiency Act**

The Anti-deficiency Act is part of a statutory scheme that limits the ability of federal agencies to spend and obligate money. Specifically, the act provides that an "officer or employee of the United States Government" may not: (1) "make or authorize an expenditure or obligation exceeding the amount available in an appropriation or fund for the expenditure or obligation"; or (2) "involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law."<sup>7</sup> The Anti-deficiency Act can be violated by making an expenditure for which no appropriation was authorized.<sup>8</sup>

A government officer or employee who violates the act "shall be subject to" administrative discipline, including suspension from duty without pay or removal from office.<sup>9</sup> An officer or employee who "knowingly and willfully" violates these provisions "shall be fined not more than \$5,000, imprisoned for not more than 2 years, or both."<sup>10</sup> In addition, when an Anti-deficiency Act violation occurs, the head of the agency must immediately report the violation, all relevant facts, and a statement of actions taken to the President and Congress, and forward a copy of the report to the Comptroller General.<sup>11</sup>

If Mr. Mulvaney ordered the redirection of CFPB press inquiries to OMB staff, or if other OMB staff are working on CFPB matters, this may constitute a violation of the Anti-deficiency Act. Further, as the head of OMB, Mr. Mulvaney has an obligation to report Anti-deficiency Act

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<sup>4</sup> Court Decision Leaves White House's Mulvaney in Place as Acting Head of CFPB, *Reuters*, November 28, 2017, available at <https://www.cnn.com/2017/11/28/court-decision-leaves-white-houses-mulvaney-in-place-as-acting-head-of-cfpb.html>.

<sup>5</sup> Pete Schroeder, Financial Regulation Correspondent at *Reuters*, Twitter, November 27, 2017, available at <https://twitter.com/peteschroeder/status/935198401116897283>.

<sup>6</sup> Domonoske, *NPR*, Nov. 27, 2017.

<sup>7</sup> 31 U.S.C. § 1341(a)(1)(A-B). See also 2 U.S. Gov't Accountability Office, *Principles of Federal Appropriations Law*, 6-36 (3d ed. 2010).

<sup>8</sup> *Id.*, 6-41

<sup>9</sup> 31 U.S.C. § 1349(a).

<sup>10</sup> 31 U.S.C. § 1350.

<sup>11</sup> 31 U.S.C. § 1351.

violations to the president and Congress, and to forward reports to the Comptroller General. It does not appear, Mr. Mulvaney has self-reported any such violations.

**Conclusion**

The law requires that federal dollars be spent for the purposes for which they were appropriated. Regardless of the questions surrounding the leadership CFPB, if OMB staff members – receiving taxpayer funded salaries to work for OMB – are actually working for the CFPB, they may be violating the Anti-deficiency Act.

As a result, CfA requests that Congress investigate this matter and insure that taxpayer money is being spent in accordance with the law.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dan E. Stevens", with a long horizontal flourish extending to the right.

Daniel E. Stevens  
Executive Director