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COMMITTEE ON NATURAL RESOURCES

CHAIR, INDIAN AND INSULAR AFFAIRS

JUDICIARY COMMITTEE

SELECT SUBCOMMITTEE ON THE WEAPONIZATION
OF THE FEDERAL GOVERNMENT



Congress of the United States

House of Representatives

Washington, DC 20515

November 9, 2023

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The Honorable Rohit Chopra
Director
Bureau of Consumer Financial Protection
1700 G St N.W.
Washington, D.C. 20552

The Honorable Kristen Clarke
Assistant Attorney General for Civil Rights
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Director Chopra and Assistant Attorney General Clarke,

On October 12, 2023, the Bureau of Consumer Financial Protection (CFPB) and the Department of Justice (DOJ) (the agencies) issued a “Joint Statement on Fair Lending and Credit Opportunities for Noncitizen Borrowers under the Equal Credit Opportunity Act” (“Joint Statement”). While ostensibly guidance in nature, I am deeply concerned by your blatant attempt to dissuade financial institutions from considering all of the relevant factors they are legally permitted to evaluate when reviewing a loan application to ascertain their repayment rights. It is apparent from this letter that the Biden Administration has chosen to not only ignore our nation’s immigration laws but also attempt to intimidate our financial institutions into providing credit to illegal aliens while ignoring their illegal status.

The agencies’ Joint Statement is clearly intended to warn our banks and other financial institutions against considering immigration status, including whether an individual is lawfully present in the country, to assess their creditworthiness and qualifications for a loan. While you reluctantly admit that the Equal Credit Opportunity Act (ECOA) does not “expressly” prohibit consideration of immigration status (meaning that financial institutions are legally entitled to consider it), your actions have sought to conflate such status with race, color, and national origin. These decisions have set up the necessary straw man that one thing is the same as the other. Your letter, in other words, is intended to equate a bank’s consideration of whether a person is in the country illegally with discrimination based on physical demographics. Regardless of the superficial niceties in your Joint Statement, you are warning financial institutions that immigration status is off limits despite what is stated in the ECOA or Regulation B.

Your Joint Statement is replete with warnings that the full weight of the federal government will be brought to bear against any financial institution that does not willingly and knowingly provide loans to illegal aliens. This covers everything from threats of broad and unfettered enforcement of ECOA (well beyond Congressional intent), to cautioning against the requirement for documentation and identification when applying for a loan. You have done so despite admitting that the law does not prohibit financial institutions from requesting such information, even citing that section of the Code of Federal Regulations implementing ECOA which broadly allows for the consideration of an individual’s immigration status.

It is apparent that, in your efforts to support President Biden's open border agenda, you are trying to suggest that policies based on responsible lending and sound risk management are somehow racist. That position is absurd, and any effort by either agency to implement or enforce such a policy would be unlawful and well outside your jurisdiction.

Your Joint Statement is as dangerous to the stability of our financial system as it is for our immigration laws. Simply put, it seems to be yet another attempt by this Administration to open our borders by promoting incentives to encourage illegal immigration at the expense of our financial institution's integrity and the safety of everyday Americans.

In light of the seriousness of your Joint Statement, I request that you respond to the following questions by November 30, 2023:

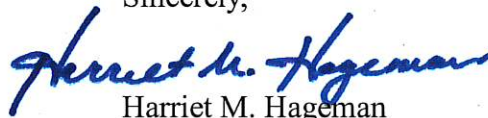
1. What authority does the CFPB or DOJ have to instruct financial institutions on whether they may request immigration status from potential borrowers?
2. Should our financial institutions actually follow the instructions outlined in this Joint Statement and disregard the immigration status of potential borrowers during the lending process:
 - a. How do you propose the banks will be able to identify and value collateral?
 - b. What would a bank's recourse be if an illegal alien who obtained a loan is later deported or voluntarily returns to their home country?
 - c. How do the agencies guarantee protection for banks from criminal and civil liability if an immigrant improperly uses the loan money for a purpose that violates local, state, or federal law?
 - d. What liability does a financial institution face when loaning money to an individual who has broken one or more of our immigration laws and, therefore, may not be legally entitled to borrow money in the United States?
3. To what extent will the CFPB and/or DOJ repay our financial institutions for any loan granted to an illegal alien if such alien later defaults?
4. How do the CFPB and DOJ intend to investigate financial institutions to determine whether their request for immigration status violates ECOA, Regulation B, and/or 42 U.S.C. § 1981?
5. How will CFPB and DOJ determine whether a financial institution's consideration of an applicant's immigration status violates ECOA's antidiscrimination provisions, Regulation B, and/or 42 U.S.C. § 1981?
6. How do you plan to ensure that financial institutions when viewing this guidance know that it does not have the force of law and that you are not attempting to rewrite ECOA to exclude the consideration of an individual's immigration status?
7. Which federal laws require financial institutions to provide loans or credit to illegal aliens?

8. Under what circumstance would CFPB or the DOJ have standing to pursue a claim under 42 U.S.C. § 1981 on behalf of an illegal alien or any potential borrower who was asked to provide proof of immigration status?
9. Has the CFPB, DOJ, or anyone on behalf of either agency sought to recruit individuals to make claims against any financial institutions challenging their use of immigration status when considering a credit application?

Your implied threats to our financial institutions risk worsening the situation at the southern border as well as our nation's fiscal health. I find it disturbing that the CFPB and DOJ would waste precious energy and resources to prevent our financial institutions from implementing common-sense and effective controls to protect their assets and the well-being of their customers, creditors, and investors. It is thus imperative that I receive responses to the questions set forth above so that Congress can better understand how you are preparing to pursue enforcement of ECOA and 42 U.S.C. § 1981. Please provide such responses by November 30, 2023.

Thank you for your attention to this matter.

Sincerely,



Harriet M. Hageman
Member of Congress