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Patricia S. Dodszuweit, Clerk
United States Court of Appeals for the Third Circuit
21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Re: *Consumer Financial Protection Bureau v. Navient Corp. et al.*, No. 21-8011

Dear Ms. Dodszuweit,

On behalf of petitioners, I write in response to the Consumer Financial Protection Bureau's June 29, 2021 letter regarding *Collins v. Yellen*, 2021 WL 2557067 (U.S. June 23, 2021).

Contrary to the CFPB's assertion (Ltr. 1), *Collins* does not "obviate[]" the question certified here, which is whether equitable tolling can save the otherwise-untimely ratification of an agency enforcement action. Indeed, *Collins* does not address that question at all.

Moreover, while the CFPB contends (Ltr. 2) that *Collins*'s reasoning shows that no valid ratification is necessary here, the CFPB explicitly conceded below that ratification *is* necessary for this case to proceed, *see* Dkt. 1-1 Ex. B at 10; *id.* Ex. C at 7 n.4. The CFPB thus forfeited any argument to the contrary here. (The issue has likewise been forfeited in other cases. *See, e.g.*, Pl.'s Opp. To Defs.' Mot. To Dismiss 3-5, *CFPB v. Access Funding, LLC*, No. 1:16-cv-03759 (D. Md. Oct. 23, 2020).) In any event, *Collins* does not say that ratification is unnecessary; it expressly leaves open whether ratification might be necessary to save agency actions undertaken while the agency head was improperly insulated from presidential control. *See* 2021 WL 2557067 at *19-*20.

Finally, *Collins* is different from this case in two important ways. First, the relevant agency action in *Collins* had already been undone by the time of the Supreme Court's decision, so the Court addressed only what retrospective damages were due. *See* 2021 WL 2557067 at *19. Here, by contrast, the CFPB's enforcement action is ongoing, and petitioners seek not damages but the dismissal of an action initiated without proper presidential oversight. The Court's ruling regarding whether a separation-of-powers violation creates a "compensable harm" is thus not controlling here. *See id.* at *20. Second, *Collins* concerned agency action initiated by an acting director who *was* removable by the president at will. *See id.* at *13-*15, *19. This action, by contrast, was initiated by an unaccountable, Senate-confirmed director. The prejudice to petitioners is thus far greater because *no* properly accountable director expressly affirmed the decision to file this action until *after* all applicable statutes of limitations had run.

Sincerely,

/s/ Seth P. Waxman

Seth P. Waxman

cc: All counsel of record (by CM/ECF)