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May 14, 2018

**RE: Freedom of Information Act Request**

Dear FOIA Officer:

This letter constitutes a request pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq., submitted by the Lawyers’ Committee for Civil Rights Under Law (“Lawyers’ Committee”).

The Lawyers’ Committee is a non-profit, non-partisan organization formed in 1963 at the request of President John F. Kennedy to enlist the private bar’s resources in combatting racial discrimination and the resulting inequality of opportunity. The Lawyers’ Committee’s principal mission is to secure equal justice for all through the rule of law, targeting in particular the inequities confronting African Americans and other racial and ethnic minorities.

On November 24, 2017, Office of Management and Budget (OMB) Director Mick Mulvaney also became the Acting Director of the Consumer Financial Protection Bureau (CFPB).<sup>1</sup> On January 16, 2018, Acting Director Mulvaney announced that the CFPB would repeal the Payday Loan Rule, which was adopted in October 2017.<sup>2</sup> The Rule regulates payday loans, auto title loans, and other types of expensive loans targeted at poor communities with poor credit.<sup>3</sup> The Rule is particularly important to African American and Latino communities where studies have shown that payday lenders are concentrated.<sup>4</sup> As part of its January 16, 2018 announcement,

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<sup>1</sup> Victoria Guida, *Trump taps Mulvaney to head CFPB, sparking confusion over agency’s leadership*, Politico (Nov. 24, 2017), <https://www.politico.com/story/2017/11/24/richard-cordray-successor-cfpb-leandra-english-259612>.

<sup>2</sup> CFPB *Statement on Payday Rule*, CFPB (Jan. 16, 2018), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-statement-payday-rule/>; CFPB *Finalizes Rule to Stop Payday Debt Traps*, CFPB (Oct. 5, 2017), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-stop-payday-debt-traps/>.

<sup>3</sup> See Raul Arce-Contreras, *A Word of Caution on Payday Loans*, Center for American Progress (Apr. 7, 2009), <https://www.americanprogress.org/issues/economy/news/2009/04/07/5850/a-word-of-caution-on-payday-loans/>.

<sup>4</sup> Donna Tam, *Are payday loans hurting minorities?*, Marketplace (March 24, 2016), <https://www.marketplace.org/2016/03/24/world/are-payday-loans-are-hurting-minorities>; Natalie Moore, *Payday lenders concentrated in minority communities*, WBEZ (Feb. 10, 2011), <https://www.wbez.org/shows/wbez-news/payday-lenders-concentrated-in-minority-communities/4761e6c2-a0a6-4ab7-9459-ec9bc346206d>; *Race Matters: The Concentration of Payday Lenders in African-American Neighborhoods in North Carolina*, Center for



CFPB said it will grant waivers from compliance with the Payday Loan Rule's registration system, which is slated to go into effect in April 2018.<sup>5</sup>

The Lawyers' Committee has grave concerns that the CFPB is now being run by corporate interests. The payday lending industry has given \$63,000 to Mr. Mulvaney.<sup>6</sup> Not surprisingly, the CFPB has inexplicably dropped at least three litigations or investigations into lenders engaged in egregious practices. On January 18, CFPB dropped a lawsuit against a group of payday lenders in Kansas who affiliated with Native American tribes in order to evade regulation; their loans carried annual interest rates as high as 950%.<sup>7</sup> And on January 23, CFPB quietly terminated a four-year investigation of World Acceptance Corporation's abusive payday lending practices; the company has given \$4,500 to Mr. Mulvaney's past political campaigns.<sup>8</sup> Mr. Mulvaney's CFPB has also dropped an investigation into a different lender, World Finance.<sup>9</sup> The chief executive of the Community Financial Services Association of America, which represents the payday lending industry, reports that they are "finding it easier to have our voice heard on the staff level [of the CFPB.]"<sup>10</sup> The former CEO of World Acceptance even contacted Mr. Mulvaney at his personal email address to ask that she be considered for CFPB director (prior to Mr. Mulvaney's own appointment).<sup>11</sup>

The Lawyers' Committee seeks to uncover the extent to which OMB Director Mulvaney uses his White House office to meet with financial industry lobbyists and representatives, or plan the future activities of CFPB Acting Director Mulvaney, including plans to roll back the Payday Loan Rule or restructure the Office of Fair Lending and Equal Opportunity.

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Responsible Lending (March 22, 2005), <http://www.responsiblelending.org/research-publication/race-matters-concentration-payday-lenders-african-american-neighborhoods-north>.

<sup>5</sup> CFPB Statement on Payday Rule.

<sup>6</sup> Alan Rappeport, *Payday Rules Relax on Trump's Watch After Lobbying by Lenders*, N.Y. Times (Feb. 2, 2018), <https://www.nytimes.com/2018/02/02/us/politics/payday-lenders-lobbying-regulations.html>.

<sup>7</sup> Zeke Faux, *CFPB Signals Shift by Dropping Payday Lender Lawsuit*, Bloomberg (Jan. 18, 2018), <https://www.bloomberg.com/news/articles/2018-01-18/trump-led-cfpb-signals-shift-by-dropping-payday-lender-lawsuit>; see also *CFPB v. Golden Valley Lending, Inc.*, 2:17-cv-02521 (D. Kan.).

<sup>8</sup> Josh Keefe, *CFPB Drops Investigation Into Payday Lender that Contributed to Mick Mulvaney's Campaigns*, Int'l Bus. Times (Jan. 23, 2018), <http://www.ibtimes.com/political-capital/cfpb-drops-investigation-payday-lender-contributed-mick-mulvaney-campaigns>.

<sup>9</sup> Paul Kiel, *Newly Defanged, Top Consumer Protection Agency Drops Investigation of High-Cost Lender*, ProPublica (Jan. 23, 2018), <https://www.propublica.org/article/consumer-financial-protection-bureau-drops-investigation-of-high-cost-lender>.

<sup>10</sup> Renee Merle, *Trump administration strips consumer watchdog office of enforcement powers in lending discrimination cases*, Wash. Post (Feb. 1, 2018), [https://www.washingtonpost.com/news/business/wp/2018/02/01/trump-administration-strips-consumer-watchdog-office-of-enforcement-powers-against-financial-firms-in-lending-discrimination-cases/?utm\\_term=.ac24d787de51](https://www.washingtonpost.com/news/business/wp/2018/02/01/trump-administration-strips-consumer-watchdog-office-of-enforcement-powers-against-financial-firms-in-lending-discrimination-cases/?utm_term=.ac24d787de51).

<sup>11</sup> Associated Press, *Under Trump, payday lenders and consumer protection agency exhibit cozier relationship*, L.A. Times (Mar. 6, 2018), <http://www.latimes.com/business/la-fi-cfpb-payday-lender-20180306-story.html>.



## **Requested Records**

The Lawyers' Committee requests that OMB produce the following within twenty business days:

- Communications and/or calendar entries (including invitations) related to Consumer Financial Protection Bureau (CFPB) regulations, investigations, litigations, or other regulatory actions, held by OMB Director Mick Mulvaney, his chief of staff, and their direct reports. Please provide all responsive records from February 16, 2017, to November 25, 2017.
- Communications and/or calendar entries (including invitations) related to Consumer Financial Protection Bureau (CFPB) regulations, investigations, litigations, or other regulatory actions, held by other employees of the OMB Office of the Director. Please provide all responsive records from February 16, 2017, to November 25, 2017.
- Communications and/or calendar entries (including invitations) involving OMB Director Mick Mulvaney, his chief of staff, or their direct reports, and any of the following companies or organizations, their employees, or their representatives. Please provide all responsive records from February 16, 2017, to November 25, 2017.
  - Golden Valley Lending
  - Silver Cloud Financial
  - Mountain Summit Financial
  - Majestic Lake Financial
  - World Acceptance Corporation
  - World Finance
  - Community Choice Financial
  - Community Financial Services Association of America, including any of its Board of Directors:<sup>12</sup>
    - Patrick O'Shaughnessy
    - Donald Gayhardt
    - C. Dan Adams
    - Darrin Andersen
    - Dennis Bassford
    - Dennis Shaul
    - Kip Cashmore
    - Doug Clark
    - D. Lynn DeVault
    - Ian MacKechnie
    - Tracy Rawle
    - Brian K. Lynn

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<sup>12</sup> *Board of Directors*, Community Financial Services Association of America, <https://www.cfsaa.com/board-of-directors> (last visited April 6, 2018).



- Communications and/or calendar entries (including invitations) involving any other employee of the OMB Office of the Director and any of the following companies or organizations, their employees, or their representatives. Please provide all responsive records from February 16, 2017, to November 25, 2017.
  - Golden Valley Lending
  - Silver Cloud Financial
  - Mountain Summit Financial
  - Majestic Lake Financial
  - World Acceptance Corporation
  - World Finance
  - Community Choice Financial
  - Community Financial Services Association of America, including any of its Board of Directors:<sup>13</sup>
    - Patrick O'Shaughnessy
    - Donald Gayhardt
    - C. Dan Adams
    - Darrin Andersen
    - Dennis Bassford
    - Dennis Shaul
    - Kip Cashmore
    - Doug Clark
    - D. Lynn DeVault
    - Ian MacKechnie
    - Tracy Rawle
    - Brian K. Lynn

OMB should search for the above companies, organizations, and individuals both using keyword searching within the body of records and as an entry in the to/from/cc/bcc fields of emails or calendar entries.

The Lawyers' Committee is *not* interested in any records, or portions thereof, that would be subject to the (b)(4) exemption. We are not interested in non-final drafts of documents in instances where multiple drafts or versions exist. We are not interested in OMB records not held by the Office of the Director.

For calendar entries created in Outlook or similar programs, the documents should be produced in "memo" form to include all invitees, any notes, and all attachments. Please do not limit your search to Outlook calendars – we request the production of any calendar – paper or electronic,

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<sup>13</sup> *Board of Directors*, Community Financial Services Association of America, <https://www.cfsaa.com/board-of-directors> (last visited April 6, 2018).



whether on government-issued or personal devices – used to track or coordinate how OMB employees, including these individuals, allocate their time on agency business.

The Lawyers' Committee seeks all responsive records regardless of format, medium or physical characteristics. In conducting your search, please understand the terms “communication” and “calendar entry” in their broadest sense, to include any written, typed, recorded, graphic, printed or audio material of any kind. Our request includes any attachments to these records.

You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts. Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA.<sup>14</sup> It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; the Lawyers' Committee has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.<sup>15</sup>

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.<sup>16</sup> Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians' files. For example, a custodian may have deleted a responsive email from his or her email program, but OMB's archiving tools would capture that email under Capstone. Accordingly, the Lawyers' Committee insists that OMB use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. The Lawyers' Committee is available to work with you to craft appropriate search terms. However, custodian searches are still required; agencies may not have

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<sup>14</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149-50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955-56 (D.C. Cir. 2016).

<sup>15</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official's] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work related email in the [personal] account was duplicated in [the official's] work email account.” (citations omitted)).

<sup>16</sup> Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidentialmemorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.



direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”<sup>17</sup> If it is your position that any portion of the requested records is exempt from disclosure, the Lawyers’ Committee requests that you provide an index of those documents as required under *Vaughn v. Rosen*.<sup>18</sup> As you are aware, a Vaughn index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”<sup>19</sup> Moreover, the Vaughn index “must describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of disclosing the sought-after information.”<sup>20</sup> Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”<sup>21</sup>

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonable segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.<sup>22</sup> Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

You should institute a preservation hold on information responsive to this request. The Lawyers’ Committee intends to pursue all legal avenues to enforce its right of access under FOIA, including litigation if necessary. Accordingly, OMB is on notice that litigation is reasonably foreseeable.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, the Lawyers’ Committee welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, we can decrease the likelihood of costly and time-consuming litigation in the future.

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<sup>17</sup> FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114–185).

<sup>18</sup> 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974).

<sup>19</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

<sup>20</sup> *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

<sup>21</sup> *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

<sup>22</sup> *Mead Data Central*, 566 F.2d at 261.



Where possible, please provide responsive material in electronic format by email to [dbrody@lawyerscommittee.org](mailto:dbrody@lawyerscommittee.org) or in PDF format on a USB drive. Please send any responsive material being sent by mail to David Brody; Lawyers' Committee for Civil Rights Under Law; 1401 New York Avenue, NW, Suite 400; Washington, DC 20005. If it will accelerate release of responsive records, please also provide responsive material on a rolling basis.

### **Fee Waiver Request**

The Lawyers' Committee requests that all fees in connection with this FOIA request be waived in accordance with 5 U.S.C. § 552(a)(4)(A)(iii) because it does not seek the records for a commercial purpose and disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government.<sup>23</sup>

OMB resources, including its staff's time and attention, should be centered on OMB responsibilities. The CFPB exists to protect consumers, not banks and lenders. Payday and auto title lenders often prey on low-income consumers who lack access to conventional loans with reasonable interest rates.<sup>24</sup> "[T]ypical payday loan borrowers include low-income households and those headed by minorities and single women."<sup>25</sup> These low-income consumers are disproportionately unbanked or under-banked people of color. "Predatory lending in protected communities may constitute discrimination—not because it excludes minorities, but because it targets and exploits them by offering loans with abusive terms and conditions."<sup>26</sup>

The Lawyers' Committee is a 501(c)(3) nonprofit organizations and does not have a commercial purpose, and the release of the information requested is not in the Lawyers' Committee's financial interest. The Lawyers' Committee was founded in 1963 and is committed to full and fair enforcement of federal civil rights laws and ensuring equal justice under law for all. Economic justice projects and fair lending projects are core programmatic areas of the Lawyers' Committee. The Lawyers' Committee has a strong interest in protecting the rights of minority, low-income customers who can no longer turn to the CFPB for relief and addressing predatory lending practices that stymie economic development in these communities. African Americans and other racial minorities have historically been discriminated against in the consumer financial marketplace; policies such as redlining restrict economic opportunity for minorities and contribute to present day economic disparities.

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<sup>23</sup> 28 C.F.R. § 16.10(k)(1), (2)(i)-(ii).

<sup>24</sup> See Raul Arce-Contreras, *A Word of Caution on Payday Loans*, Center for American Progress (Apr. 7, 2009), <https://www.americanprogress.org/issues/economy/news/2009/04/07/5850/a-word-of-caution-on-payday-loans/>.

<sup>25</sup> *Id.*

<sup>26</sup> *Race Matters: The Concentration of Payday Lenders in African-American Neighborhoods in North Carolina*, Center for Responsible Lending (March 22, 2005), <http://www.responsiblelending.org/research-publication/race-matters-concentration-payday-lenders-african-american-neighborhoods-north>.



The Lawyers' Committee will use the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. The Lawyers' Committee will also make materials it gathers available on its public website and promote their availability on social media platforms, such as Facebook and Twitter.

Accordingly, the Lawyers' Committee qualifies for a fee waiver. If a waiver is not granted, then please advise us of the amount of any proposed search and reproduction charges before those activities are carried out.

We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

### **Application for Expedited Records**

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 5 C.F.R. § 1303.10(d)(1)(iv).

We certify to be true and correct to the best of our knowledge and belief that expedited processing is warranted because there is a compelling and urgent need to inform the public about, and there are questions regarding, the change in CFPB leadership and to what extent OMB resources were used to do the work of another (and independent) agency. It is uniquely unusual to have one individual running both a White House office and an independent agency. In fact, there is ongoing litigation between CFPB deputy director Leandra English and Mr. Mulvaney regarding who is the rightful acting director of the CFPB pursuant to its authorizing statute; that case is being expedited at the D.C. Circuit.<sup>27</sup> While this dispute is ongoing, Mr. Mulvaney is aggressively taking deregulatory actions at CFPB to undermine fair lending enforcement in a manner that could have disparate negative impacts on communities of color. The Lawyers' Committee intends to quickly publish responsive records so that the public can be informed about changes in the CFPB's enforcement practices.

Accordingly, the Lawyers' Committee qualifies for expedited processing under the statute.

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<sup>27</sup> Jim Puzzanghera, *Judge denies injunction to remove Mick Mulvaney as consumer bureau's acting director*, L.A. Times (Jan. 11, 2018), <http://www.latimes.com/business/la-fi-cfpb-acting-director-20180110-story.html>.



### **Conclusion**

We share a common mission to promote transparency in government. The Lawyers' Committee looks forward to working with you on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully complying with this request, please contact David Brody at [dbrody@lawyerscommittee.org](mailto:dbrody@lawyerscommittee.org).

Thank you very much for your attention to this matter.

Sincerely,

Kristen Clarke  
President and Executive Director  
The Lawyers' Committee for Civil Rights Under Law