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Consumer Financial Protection Bureau
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October 10, 2018

Re: Freedom of Information Act (FOIA) Request

Dear FOIA Officer:

The Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") hereby submits this request made pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq.

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 January 16, 2018, Acting Director Mick Mulvaney announced that the Consumer Financial Protection Bureau ("CFPB") would repeal its October 4, 2017 Final Rule regarding Payday, Vehicle Title, and Certain High-Cost Installment Loans ("the Payday Loan Rule" or "Rule")¹—a Rule aimed at protecting millions of financially-vulnerable consumers from payday debt traps. The Rule's common-sense consumer protections are particularly important to African American, Hispanic, and other racial and ethnic communities who are disproportionately targeted by payday lenders.² The Lawyers' Committee has grave concerns that any repeal or roll back of the Rule will result in a consumer environment where lenders offer consumers loans they cannot afford and borrowers are forced to choose between defaulting, re-borrowing, or skipping major financial obligations or expenses. We therefore seek information relating to the Rule and its predicted impact on consumers.

Requested Records

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

1. Data, memoranda, and reports, including economic or other empirical analyses, relating to payday lending and its effects across or in different geographic areas, including urban,

¹ 82 FR 54472 (Nov. 4, 2017).

² Final Rule at 315.



suburban, and rural areas. In providing responsive records, please include, but not limit, searches for “payday” in combination with the terms:

- a. Urban;
 - b. Suburban;
 - c. Rural;
 - d. Geographic;
 - e. Demographic;
 - f. Territory; and
 - g. Region.
2. Data, memoranda, and reports, including maps and other visual information devices, of the geographic locations and/or concentrations of payday loan lenders.
 3. Data, memoranda, and reports, including economic or other empirical analyses, relating to the racial or ethnic impact of payday loans and/or the Rule. In providing responsive records, please include, but not limit, searches for “payday” in combination with the terms:
 - a. Black and/or African American;
 - b. Latino and/or Hispanic;
 - c. Asian;
 - d. White;
 - e. Native American and/or American Indian;
 - f. Native or Pacific Islander;
 - g. Minorities;
 - h. Minority Communities; and
 - i. Communities of Color.
 4. Data, memoranda, and reports, including economic or other empirical analyses, relating to the advertisement of payday loans.

The effective date range for these requests includes all documents created between January 1, 2013 and the present, unless otherwise specified. The search terms provided above are exemplary and should not constitute the total of CFPB’s search for responsive records. Furthermore, searches should include reasonable permutations of requested search terms (e.g. plurals, verb-tenses, etc.)

Further Instructions for Search

CFPB should search for information responsive to the above requests using keyword searching within the body of records and as well as in entries 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 also not interested in non-final drafts of documents or memoranda, in instances where multiple drafts or versions exist.

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.³ 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 CFPB's archiving tools would capture that email under Capstone. Accordingly, the Lawyers' Committee insists that CFPB 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 create appropriate search terms. However, custodian searches are still required; agencies may not have 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.”⁴ 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*.⁵ 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.”⁶ 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.”⁷ 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.’”⁸

³ 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>.

⁴ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114–185).

⁵ 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974).

⁶ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

⁷ *King v. U.S. Dep't of Justice*, 830 F.2d 210, 223—24 (D.C. Cir. 1987) (emphasis in original).

⁸ *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)).



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.⁹ 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, CFPB 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.

Where possible, please provide responsive material in electronic format by email to 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; 1500 K Street, NW, Suite 900; 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.¹⁰

The requested records concern the identifiable operations or activities of the federal government. They are products of the CFPB, used by the CFPB in the course of its regulatory and enforcement activities; namely the formulation, enforcement, and/or roll back of the Rule.

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

⁹ *Mead Data Central*, 556 F.2d at 261.

¹⁰ 28 C.F.R. § 16.10(k)(1), (2)(i)-(ii).



rates.¹¹ “[T]ypical payday loan borrowers include low-income households and those headed by minorities and single women.”¹² 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.”¹³ The requested records will inform the public about how payday lending affects vulnerable and minority communities, how the Rule protects these communities, and why a roll back of the Rule would expose these communities to predatory lending. Consequently, disclosure of these records will be meaningfully informative about the operations of the CFPB with regard to payday lending—specifically whether it is fulfilling its mission to protect consumers.

Public understanding after the disclosure of these records will be enhanced to a significant extent. While the Rule was lengthy and thorough, additional records disclosed through this request will add to the public’s understanding of how payday lending works. Specifically, the data and analyses requested will be useful to explain how payday lending affects low income and minority communities. Analysis of these data to compare economic outcomes and find correlations between different variables and demographics will help the public understand the impact of the Payday Loan Rule and what could happen if the CFPB goes forward with its plan to repeal it.

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 and fair lending are core programmatic areas of the Lawyers’ Committee. The Lawyers’ Committee has a strong interest in protecting the rights of minority, low-income customers and addressing predatory lending practices that stymie economic development in these communities. African Americans, Hispanics, 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.

The requested records will contribute to the understanding of a broad audience of persons interested in this subject. The requested records relate to the payday lending market and as such they are relevant to the protection of all consumers within that market. 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

¹¹ 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/>.

¹² *Id.*

¹³ *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>.



Facebook and Twitter. Furthermore, the Lawyers' Committee will also use the requested information and build upon it in future CFPB rulemakings concerning the Payday Lending Rule.

The Lawyers' Committee has a demonstrated history of and capacity for effectively disseminating information to the public. The organization has a communication staff dedicated to the publication of information¹⁴ on its direct website (www.lawyerscommittee.org) as well as through social media platforms. The Lawyers' Committee's average social media reach is 15 million impressions per month.¹⁵ Its Twitter page has over 32,000 followers,¹⁶ and the Twitter page of its Executive Director, Kristen Clarke, has over 27,000 followers.¹⁷ The Lawyers' Committee's Facebook page has almost 8,000 followers.¹⁸ The Lawyers' Committee's attorneys are asked to contribute information to various media outlets and the executive director is regularly quoted in national publications. It routinely shares information from FOIA requests with news media and gives interviews on important civil rights issues.¹⁹ 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).

Expedited processing is warranted because there is a compelling and urgent need to inform the public about payday loans, and there are questions regarding changes in CFPB's position regarding the Rule and its general rulemaking authority. Acting Director Mulvaney continues to take aggressive deregulatory actions at CFPB to undermine fair lending rules and enforcement in a manner that could have immediate and disparate negative impacts on communities of color. These actions include (1) granting enforcement waivers; (2) planning rulemakings aimed at rolling back the Payday Lending Rule; and (3) attempting to repeal the Rule outside of required notice-and-comment procedures by refusing to defend the Rule in litigation brought by the payday loan industry. The Lawyers' Committee intends to quickly publish responsive records so that the public can be informed about changes in the CFPB's enforcement practices. Moreover, the Lawyers' Committee intends to prepare responses to any further attempts by the CFPB to repeal or rollback the Rule.

¹⁴ See *2017 Annual Report*, Lawyers' Committee for Civil Rights Under Law (2017), <https://lawyerscommittee.org/wp-content/uploads/2018/01/2017annualreport.pdf>.

¹⁵ See *Newsroom*, Lawyers' Committee for Civil Rights Under Law, <https://lawyerscommittee.org/newsroom/>.

¹⁶ Lawyers' Committee for Civil Rights Under Law, @LawyersComm, Twitter, <https://twitter.com/LawyersComm>.

¹⁷ Kristen Clarke, @KristenClarkeJD, Twitter, <https://twitter.com/kristenclarkejd>.

¹⁸ Lawyers' Committee for Civil Rights Under Law, @lawyerscommittee, Facebook, <https://www.facebook.com/lawyerscommittee/>.

¹⁹ See *News Clips*, Lawyers' Committee for Civil Rights Under Law, <https://lawyerscommittee.org/newsclip/>.



Over the past year, the CFPB has repeatedly stated that it intends to initiate a rulemaking to repeal the Rule. In June and July 2018, the CFPB attempted to indefinitely suspend the Rule—effectively repealing it—by joining with private litigants to request that a district court judge in Texas indefinitely stay the Rule’s compliance dates. In August 2018, the CFPB also reported to the Texas district court that it intends to reconsider the Rule by releasing a Notice of Proposed Rulemaking (NPRM). That imminent NPRM may only have a brief window for interested parties, including Lawyers’ Committee, to file comments. Accordingly, it is essential for this records request to receive expedited processing so that the public can digest and analyze the records *before* the comment period for the NPRM begins. That way, the public can meaningfully incorporate the information in the requested records into their comments on the NPRM and any further advocacy before the CFPB and Congress. Furthermore, the CFPB will have a more robust administrative record and be better informed for its final rulemaking.

We certify that the bases for this expedited processing request are true and correct to the best of our knowledge and belief.

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.

Thank you very much for your attention to this matter.

Sincerely,

Dariely Rodriguez
Director, Economic Justice Project
The Lawyers’ Committee for Civil Rights Under Law