



December 12, 2018

Via Electronic Delivery

CFPB, Attn: Chief FOIA Officer
1700 G Street NW
Washington, D.C. 20552
(855) 444-3642
CFPB_FOIA@consumerfinance.gov

Re: Freedom of Information Act Request

Dear Chief FOIA Officer:

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. §§ 552 *et seq.* and Consumer Financial Protection Bureau (“CFPB” or “Bureau”) regulations at 12 C.F.R. Part 1070, Military Officers Association of America and Democracy Forward Foundation submit this request for records.

Background

The Department of Defense (“DoD”) and CFPB share responsibility for administering the Military Lending Act (MLA), which protects military servicemembers from financial fraud and predatory lending.¹ Essential to the government’s MLA administration is CFPB’s supervision of financial institutions to ensure that they are complying with the MLA, thereby preventing servicemembers from being victimized by fraudulent and predatory behavior. But recent actions raise questions about the extent to which the CFPB is honoring the government’s commitment to our servicemembers that is embodied in the MLA.

Reporting by the New York Times and others has revealed that the CFPB “intends to scrap the use of so-called supervisory examinations of lenders” for MLA compliance, based on its erroneous legal conclusion that the MLA does not provide authority to conduct supervisory examinations to ensure MLA compliance.² Subsequent reporting suggests that the Bureau has followed through. Bloomberg reported that “CFPB also no longer supervises banks and other

¹ See DoD & CFPB, *Joint Statement of Principles on Consumer Financial Protection* (May 4, 2012), https://files.consumerfinance.gov/f/201309_cfpb_small-dollar-lending.pdf.

² See Glenn Thrush, N.Y. Times, *Mulvaney Looks to Weaken Oversight of Military Lending* (Aug. 10, 2018), <https://www.nytimes.com/2018/08/10/us/politics/mulvaney-military-lending.html>.

firms for compliance with the Military Lending Act.”³ CFPB, however, has not revised its supervision manual or publicly released any guidance confirming its apparent change in policy.⁴

Records Requested

In an effort to understand, and explain to the public, CFPB’s Military Lending Act activities, Military Officers Association of America and Democracy Forward Foundation request that CFPB produce the following within twenty (20) business days:

1. All notes, readouts, Powerpoint/presentation decks, and other presentation materials from meetings in which examination procedures relating to the Military Lending Act were discussed, including examiners’ meetings. This should include but is not limited to records in the custody of examiners and other staff in attendance and presenters, including Eric Blankenstein.
2. All records containing or reflecting communications about whether the scope of CFPB supervision and examination includes Military Lending Act compliance activities.

These searches are limited to the Office of the Director; Division of Consumer Education and Engagement; and Division of Supervision, Enforcement, and Fair Lending.

The time period for the searches is August 10, 2018 to the date the search is completed.

Please search for records regardless of format, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical materials. This request includes, without limitation, all correspondence, letters, emails, text messages, calendar entries, facsimiles, telephone messages, voice mail messages, and transcripts, notes, minutes, or audio or video recordings of any meetings, telephone conversations, or discussions. In searching for responsive records, however, please exclude publicly available materials such as news clips that mention otherwise responsive search terms.

FOIA requires agencies to disclose information, with only limited exceptions for information that would harm an interest protected by a specific exemption or where disclosure is prohibited by law. 5 U.S.C. § 552(a)(8)(A). In the event that any of the requested documents cannot be disclosed in their entirety, we request that you release any material that can be reasonably segregated. *See* 5 U.S.C. § 552(b). Should any documents or portions of documents be withheld, we further request that you state with specificity the description of the document to be withheld and the legal and factual grounds for withholding any documents or portions thereof in an index, as required by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). Should any document

³ *See* Evan Meinberger, Bloomberg Law, *Enforcement Slowdown Defines Mulvaney’s CFPB Tenure* (Nov. 26, 2018), <https://news.bloomberglaw.com/banking-law/enforcement-slowdown-defines-mulvaney-cfpb-tenure-1>.

⁴ *See* CFPB Supervision and Examination Process (Aug. 2018), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_supervision-and-examination-manual.pdf.

include both disclosable and non-disclosable material that cannot reasonably be segregated, we request that you describe what proportion of the information in a document is non-disclosable and how that information is dispersed throughout the document. *Mead Data Cent., Inc. v. U.S. Dep't of Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

If requested records are located in, or originated in, another agency, department, office, installation or bureau, please refer this request or any relevant portion of this request to the appropriate entity.

To the extent that the records are readily reproducible in an electronic format, we would prefer to receive the records in that format. However, if certain records are not available in that format, we are willing to accept the best available copy of each such record.

Please respond to this request in writing within 20 working days as required under 5 U.S.C. § 552(a)(6)(A)(i). If all of the requested documents are not available within that time period, we request that you provide us with all requested documents or portions of documents that are available within that time period. If all relevant records are not produced within that time period, we are entitled to a waiver of fees for searching and duplicating records under 5 U.S.C. § 552(a)(4)(A)(viii)(I).

Fee Waiver or Reduction Requested

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 12 C.F.R. § 1070.22, Military Officers Association of America and Democracy Forward Foundation request a waiver of all fees associated with processing records for this request.

Democracy Forward Foundation is a “Representative of the news media” within the meaning of § 1070.22(b)(1)(iv). Democracy Forward Foundation “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience” through its website, press releases, and social media outlets.⁵ *Id.*

Additionally, the subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of these operations by the public in a significant way. Moreover, the request is for non-commercial purposes.

Pursuant to 13 C.F.R. § 1070.22(e)(1)(iii)(A), disclosure of the requested records “is in the public interest because: (A) Furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the government.” This request pertains to “direct and clear” operations and activities of the CFPB--supervisory activity of the CFPB related to MLA issues--and is “meaningfully informative about government operations or activities in order to “likely to contribute” to an increased public understanding of those

⁵ See Democracy Forward Twitter, @DemocracyFWD; Democracy Forward Facebook, <https://www.facebook.com/DemocracyFwd/>; Democracy Forward Website, <https://democracyforward.org/work/democracy-forward-foundation-doc/>.

operations or activities.” *Id.* at §§ 107.22(e)(2)(A)(i)–(ii). Specifically, this request seeks to address outstanding questions about the CFPB, such as whether it continues to include MLA compliance in its supervisory oversight. The records would “contribute to the understanding of a reasonably broad audience of persons interested in the subject.” *Id.* at § 107.22(e)(2)(A)(iii). News that the CFPB might halt supervisory activity for MLA compliance generated significant interest by the media.⁶ The release of yet publicly unseen and unavailable records would enhance “[t]he public’s understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure.” *Id.* at § 107.22(e)(2)(A)(iv). The requested records will shed light on the government’s activities.

This request is “not primarily in the commercial interest of the requester.” *Id.* at § 107.22(e)(1)(iii)(B). Military Officers Association of America is a nonprofit organization organized under Internal Revenue Code § 501(c)(19), as a tax-exempt veterans organization, dedicated to serving military officers and their families and providing guidance and advice on compensation and benefits matters such as the Military Lending Act.⁷ Democracy Forward Foundation is a nonprofit organization organized under Internal Revenue Code § 501(c)(3). A core mission of Democracy Forward Foundation is to educate the public about improper government activity. Democracy Forward Foundation intends to use the materials gathered to educate the public through its website, press releases, and social media outlets. Because “[t]he CFPB ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester,” therefore the “public interest is greater in magnitude than that of any identified commercial interest in disclosure.” *Id.* at 107.22(e)(3)(ii). As nonprofit organizations, they do not have a commercial interest in the records. The records obtained from this request will be made available to the public at no cost.

Accordingly, Military Officers Association of America and Democracy Forward Foundation qualify for a fee waiver.

Conclusion

If you need clarification as to the scope of the request, have any questions, or foresee any obstacles to releasing fully the requested records within the 20-day period, please contact Nitin Shah as soon as possible at foia@democracyforward.org or 202-448-9090.

⁶ See, e.g., Emily Stewart, *The Trump Administration is Dismantling Financial Protections for the Military*, Vox (Aug. 14, 2018), vox.com/policy-and-politics/2018/8/14/17684810/military-lending-act-mick-mulvaney-cfpb-loans; Kate Berry, *American Banker*, *Pentagon, Others Baffled by CFPB Plan to Cease Military Lending Exams* (Oct. 11, 2018), <https://www.americanbanker.com/news/pentagon-others-baffled-by-cfpb-plan-to-cease-military-lending-exams>.

⁷ See Military Officers Association of America, *Voices for America’s Troops, Less Oversight of Payday Lenders?*, http://www.voicesfortroops.org/Learn_More/From_the_Newsletter/Less_Oversight_of_Payday_Lenders.html.

We appreciate your assistance and look forward to your prompt response.

Sincerely,

/s Nitin Shah
Nitin Shah
Senior Counsel
Democracy Forward Foundation

/s Aniela Szymanski
Aniela Szymanski
Director of Government Relations
Military Officers Association of America