

Congress of the United States
Washington, DC 20515

August 14, 2019

The Honorable Kathleen Kraninger
Director
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Dear Director Kraninger,

The Subcommittee on Economic and Consumer Policy, along with undersigned Members, seeks information on the Consumer Financial Protection Bureau's Office of Innovation (CFPB or the Bureau) and the proposals to expand its ability to waive compliance with the consumer protection laws and anti-discrimination laws that CFPB is tasked with enforcing. We seek information on two proposals that would be overseen by the Office of Innovation: the no-action letter program revision, and the proposed Product and Disclosure Sandboxes.¹ We are concerned that these proposals would undermine crucial laws designed to inform consumers and protect them from discrimination and unfair acts and practices. We also seek information about Paul Watkins, the Director of the Office of Innovation, who would be tasked with overseeing these programs. We have grave concerns about Mr. Watkins holding the authority to waive anti-discrimination laws given his prior employment at Alliance Defending Freedom (ADF) – a group that has been designated as a hate group by the Southern Poverty Law Center.”²

CFPB's past no-action letter policy, finalized by the CFPB in February 2016, was narrowly defined. It allowed CFPB to assure a company that it would not face enforcement, however, it only applied to situations where there was genuine uncertainty about the applicability of a regulatory scheme and when the company could demonstrate that a no-action letter was a better solution than other options, such as modifying its product.³ CFPB's proposed changes to the policy, which may already be in effect, are far broader and open the door to widespread and unnecessary exemptions from consumer protection requirements.⁴ The proposal goes so far as to

¹ Consumer Financial Protection Bureau, *Policy on No-Action Letters and the BCFP Product Sandbox*, 83 Fed. Reg. 64036, (Dec. 13, 2018); Consumer Financial Protection Bureau, *Policy to Encourage Trial Disclosure Programs*, 83 Fed. Reg. 45574, (Sept. 10, 2018).

² Southern Poverty Law Center, Alliance Defending Freedom (online at www.splcenter.org/fighting-hate/extremist-files/group/alliance-defending-freedom).

³ Consumer Financial Protection Bureau, *Policy on No-Action Letters; Information Collection*, 81 Fed. Reg. 8686 (Feb. 22, 2016).

⁴ Consumer Financial Protection Bureau, *Policy on No-Action Letters and the BCFP Product Sandbox*, 83

shield companies from enforcement of laws preventing unfair, deceptive, and abusive acts and practices (UDAAPs), something that the existing policy contemplates doing only in the rarest of circumstances. Perhaps equally troubling, the new policy gives unilateral authority to issue no-action letters to “the Assistant Director of the Office of Innovation or other members of the Office of Innovation” who report to him.⁵

The proposed Product Sandbox will allow CFPB’s Office of Innovation to grant companies prospective immunity from enforcement of a trio of consumer protection laws—the Truth in Lending Act, the Equal Credit Opportunity Act (ECOA), and the Electronic Fund Transfers Act.⁶ ECOA aims to give all Americans the opportunity to participate fully in our economy by barring lenders from discriminating based on demographic factors including race, religion, sexual orientation, and gender identity.⁷ It was recently revealed that the Director of the Office of Innovation, Paul Watkins, served for several years as senior counsel at the Alliance Defending Freedom (ADF), a hate group that has worked “to legalize discrimination against LGBTQ people.”⁸ In his role at the ADF, he worked with the Blackstone Legal Fellowship, a program with a mission to “identify and train leaders who passionately demonstrate Truth.” Blackstone pursued that mission in part by providing a “core curriculum” of reading resources, including a book coauthored by Alan Sears, then-president and Chief Executive Officer of ADF, titled, *The Homosexual Agenda: Exposing the Principal Threat to Religious Freedom Today*.⁹ Given his past involvement with an anti-LGBTQ hate group, it is particularly concerning that Mr. Watkins will be empowered to unilaterally grant immunity from a bedrock anti-discrimination law.

The proposed Disclosure Sandbox is another expansive program that would expose consumers to unnecessary risk. Disclosures provide consumers with necessary information about products and services. In order to identify better means of conveying information to consumers, Dodd-Frank gives the CFPB limited authority to approve trial disclosure programs that allow companies to deviate from CFPB model disclosures for a limited time and scope.¹⁰ Despite the statutory restrictions on such programs, the proposed Disclosure Sandbox contemplates granting waivers from disclosure requirements to entire trade associations for

Fed. Reg. 64036. (Dec. 13, 2018)(While the Consumer Financial Protection Bureau solicited comments from the public in the Federal Register about the policy, it specified in the notice that “this Policy Guidance would constitute an agency general statement of policy and a rule of agency organization, procedure, or practice exempt from the notice and comment rulemaking requirements under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(b).” Policy guidance can unilaterally be put into effect by agency and it is not clear whether the Consumer Financial Protection Bureau has done so).

⁵ *Id.*

⁶ *Id.*

⁷ 15 U.S.C. 1691(a).

⁸ *Trump Appointee Worked for Anti-LGBTQ Group and Tried to Hide It*, The Advocate (June 24, 2019) (online at www.advocate.com/politics/2019/6/24/trump-appointee-worked-anti-lgbtq-group-and-tried-hide-it).

⁹ *Id.*

¹⁰ 12 U.S.C. § 5532(e).

potentially indefinite periods of time.¹¹ Trial disclosure programs are not meant to be blanket exemptions from consumer disclosure requirements, and they should be limited in time and scope as required by law.

To assist the Subcommittee, we request by August 29, 2019 that the CFPB:

1. For each no-action letter application that the CFPB has received since October 29, 2013, and for each trial disclosure waiver application that the CFPB has received since February 18, 2016, describe the evaluation process for the application, state the date on which the CFPB received the application, and state the date on which the CFPB approved, denied, declined to take action on, or otherwise concluded its review of the application;
2. Identify the companies and trade associations with which the CFPB has discussed the existing and/or proposed no-action letter policies, the Product Sandbox, the Trial Waiver Disclosure Policy, and/or the Disclosure Sandbox between November 23, 2017, and the present; identify the CFPB official(s) who participated in each discussion with a company or trade association or its representatives; and provide all documents, including agendas, minutes, and communications, referring or relating to each discussion;
3. Provide all communications involving Director Kathleen Kraninger, former Director Mick Mulvaney, and/or Director of the Office of Innovation Paul Watkins referring or relating to: (1) the existing no-action letter policy; (2) the proposed no-action letter policy; (3) the Product Sandbox; (4) the Trial Waiver Disclosure Policy; and/or (5) the Disclosure Sandbox;
4. Provide all documents referring or relating to Paul Watkins' work with his former employer, ADF;
5. Provide information disclosed by Paul Watkins to the Bureau related to his prior employment and fitness to perform the job, including: (1) Sections 13A, 20B, and 21 through 29 of Mr. Watkins' SF 86 Security Clearance Questionnaire; and (2) Mr. Watkins' employment application materials, including resume, and references;
6. Provide all documents referring or relating to Paul Watkins' recruitment, application, interview process, selection, and hiring for his position at CFPB, including, but not limited to:

¹¹ Consumer Financial Protection Bureau, *Policy to Encourage Trial Disclosure Programs*, 83 Fed. Reg. 45574, (Sept. 10, 2018).

- a. a position description for the Director of the Office of Innovation, including what authority the CFPB used to hire Mr. Watkins;
 - b. any justification provided to the Office of Personnel Management, if the CFPB sought special authority to hire Mr. Watkins;
 - c. any individuals who recommended him;
 - d. any individuals he spoke to or met with during his interview process, and their notes;
 - e. a description of discussions and/or communications related to his former employment with the ADF; and
 - f. any other individuals who applied for the position or were interviewed for the position;
7. Paul Watkins' ethics agreement, all documents referring or relating to all of Paul Watkins' recusals, and all documents referring or relating to instances when a recusal of Paul Watkins was considered or discussed but no recusal followed;
8. Please provide every email that includes Mr. Watkins with one or more of the following search terms:
 - a. LGBT;
 - b. LGBTQ;
 - c. Lesbian;
 - d. Gay;
 - e. Bisexual;
 - f. Trans/Transgender/Transsexual;
 - g. Queer;
 - h. Questioning;
 - i. Homosexual;
 - j. Discriminat!; and
 - k. Equal Credit Opportunity Act; and
9. Answer each of the following questions:
 - a. Does the CFPB believe that it will have the authority under the proposed Product Sandbox to "approve" companies to engage in conduct that would otherwise violate provisions of the Truth in Lending Act, the Equal Credit Opportunity Act, or the Electronic Fund Transfers Act?;
 - b. Under what circumstances would the CFPB deem it appropriate to grant a no-action letter, exemption, or "approval" that relieves a company from liability under UDAAP laws, and how will the CFPB protect consumers who are harmed by a company that is exempt from UDAAP liability under a no-action letter? Provide five specific hypothetical examples of circumstances under which the CFPB could grant a no-action letter,

- exemption, or “approval” that relieves a company from liability under UDAAP laws;
- c. How is the CFPB’s stated intention to grant waiver extensions to certain trial disclosure programs, potentially lasting indefinitely while a regulatory change is pending, consistent with 12 U.S.C. 5532(e)’s requirement that trial disclosure programs are limited in time?;
 - d. How is accepting trial disclosure program applications from trade associations and service providers on behalf of groups or companies consistent with the 12 U.S.C. 5532(e) requirement that trial disclosure programs are limited in scope?;
 - e. Will CFPB commit to only accept trial disclosure programs that, consistent with 12 U.S.C. 5532(e), are designed to improve upon model forms issued by the CFPB?;
 - f. What role will Director of the Office of Innovation Paul Watkins play in evaluating applications for no-action letters, for participation in the Product Sandbox, and/or for participation in the Disclosure Sandbox?
 - g. Why does the proposed no-action letter policy not include the existing policy requirements that an applicant:
 - i. is not facing threatened or actual government enforcement or civil litigation related to the product that is the subject of the requested no-action letter?;
 - ii. show why the requested no-action letter is necessary and appropriate to remove substantial regulatory uncertainty hindering the development of a product, including why the product should not be treated as subject to or precluded by the relevant statutes and regulations?; and
 - iii. show why the substantial regulatory uncertainty that is the subject of the application cannot be effectively addressed through means other than the requested no-action letter, such as modification of the product?;
 - h. Was the CFPB aware of Mr. Watkins’ employment at ADF prior to hiring him?; and

- i. Did any Administration or Congressional official, in the CFPB, the White House, or elsewhere, recommend Mr. Watkins for his job?

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. An attachment to this letter provides additional instructions for responding to the Committee’s request. If you have any questions regarding this request, please contact Subcommittee on Economic and Consumer Policy staff at (202) 225-5051.

Sincerely,



Raja Krishnamoorthi
Chairman
Subcommittee on Economic and Consumer Policy
Committee on Oversight and Reform



Elizabeth Warren
United States Senator



Ayanna Pressley
Vice Chair
Subcommittee on Economic and Consumer Policy
Committee on Oversight and Reform



Katie Porter
Member of Congress

Enclosure

cc: The Honorable Michael Cloud, Ranking Member
House Subcommittee on Economic and Consumer Policy,
Committee on Oversight and Reform

Responding to Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committees.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committees' preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committees should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committees should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committees' letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee on Oversight and Reform, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building. When documents are produced to the Committee on Financial Services, production sets shall be delivered to the Majority Staff in Room 2129 of the Rayburn House Office Building and the Minority Staff in Room 4340 of the O'Neill House Office Building. When documents are produced to the Permanent Select Committee on Intelligence, production sets shall be delivered to Majority and Minority Staff in Room HVC-304 of the Capital Visitor Center.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a

part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.