

From: [McGill, Yolanda \(CFPB\)](#)
To: [Morgan, Hallee \(CFPB\)](#); [Silberman, David \(CFPB\)](#)
Cc: [Cochran, Kelly \(CFPB\)](#); [Campbell, Patrick \(CFPB\)](#)
Subject: MLA Monthly Digest_September 2018
Date: Tuesday, October 02, 2018 10:42:25 AM
Attachments: [MLA Monthly Digest_September 2018.doc](#)

Good morning,

Attached is the MLA digest for September 2018, please let me know if you have any questions or concerns.

Yolanda D. McGill

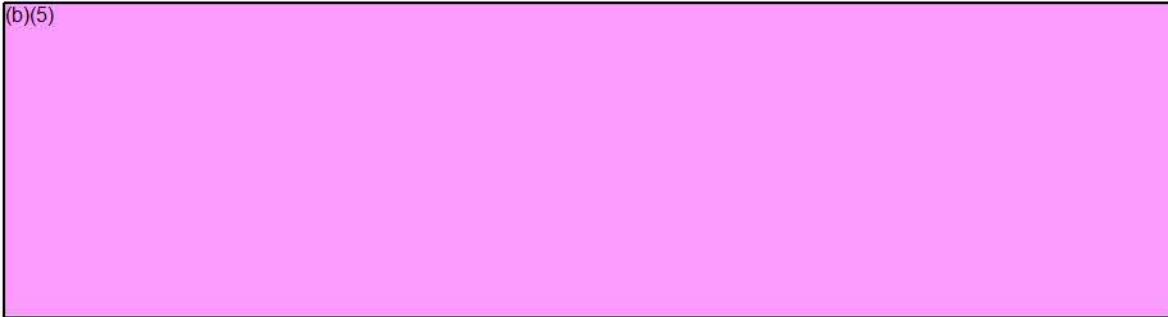
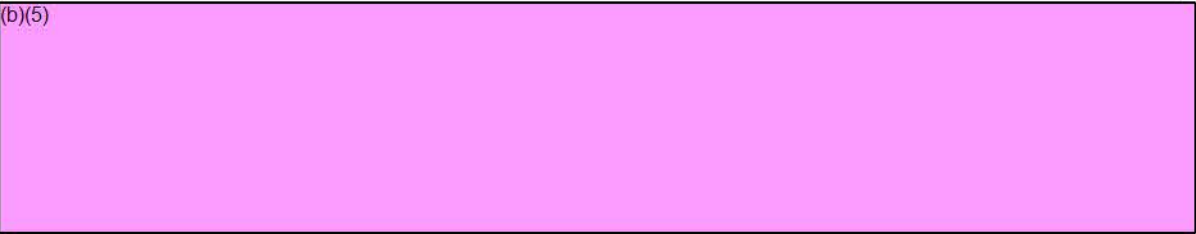
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MLA Monthly Digest – September 2018

This document provides a summary of the Bureau’s engagement with external stakeholders on matters concerning the Military Lending Act (MLA) during September 2018. Regulations staff compiled the summary in consultation with other Bureau offices, and are available to provide additional information and to answer questions as needed.

Summary

- (b)(5) 
- (b)(5) 
- On August 17, Congresswoman Rosen, along with 12 other members of Congress, wrote to Acting Director Mulvaney to ask that the Bureau continue its supervision of lenders with respect to the MLA.

From: [McGill, Yolanda \(CFPB\)](#)
To: [Silberman, David \(CFPB\)](#); [Morgan, Hallee \(CFPB\)](#)
Cc: [Cochran, Kelly \(CFPB\)](#); [Campbell, Patrick \(CFPB\)](#)
Subject: MLA Monthly Digest_November 2018
Date: Monday, December 03, 2018 5:33:26 PM
Attachments: [MLA Monthly Digest_November 2018.doc](#)

Good afternoon,

Attached is the MLA digest for November 2018, please let me know if you have any questions or concerns.

Yolanda D. McGill
Managing Counsel
Office of Regulations
Bureau of Consumer Financial Protection

(b)(6)

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MLA Monthly Digest – November 2018

This document provides a summary of the Bureau’s engagement with external stakeholders on matters concerning the Military Lending Act (MLA) during November 2018. Regulations staff compiled the summary in consultation with other Bureau offices, and are available to provide additional information and to answer questions as needed.

Summary

- On **October 26th, 2018**, the Bureau received a letter from 11 state Attorneys General, different from the previous letter from 33 AGs, stating they “are concerned about MLA compliance and protecting our military personnel.” They are requesting “a conference call or in-person meeting with the necessary senior officials, from both the Department of Defense and Bureau of Consumer Financial Protection, to discuss the MLA and how we can protect our military personnel while we wait for Congress to specify regulatory and enforcement authority.”
- On **November 21st, 2018**, the Bureau, in response to Congressional inquiries from the House and the Senate, delivered a letter stating that it is the Bureau’s position that the Bureau does not have a clear grant of authority from Congress to continue examining for MLA compliance and that the Bureau will cease exercising such authority. The Bureau sent concurrent notification the MLA working group, including members from DOD, Federal Reserve, OCC, FDIC and the FTC.
- On **November 21st, 2018**, the minority of the Senate Banking Committee published a [report](#) criticizing the Bureau for “Abandoning Consumer Protections for Servicemembers and Borrowers,” specifically mentioning the Bureau’s suspension of “routine examinations designed to identify violations of the MLA.”
- On **November 16th, 2018**, the Bureau received a press inquiry from Newsday regarding a press conference held by Senator Chuck Schumer (D-NY) “calling on the bureau to resume proactive check-ups on lenders who ‘target’ military, including with exorbitant fees and interest rates.”
- On **November 15th, 2018**, the Bureau received a Freedom of Information Act request for documents related to the Bureau’s supervisory activities relating the MLA and any MLA-related “guidance, instruction, templates, manuals, or examination procedures.”

From: [Campbell, Patrick \(CFPB\)](#)
To: ["Cohen, Andrew H CIV OSD OUSD P-R \(US\)"; "Trucco, Monica A CIV OSD OUSD P-R \(US\)"; "Cleveland Harris, Renee C CIV OSD OUSD P-R \(US\)"; \(b\)\(6\)](#)
[\(b\)\(6\)](#)
[\(b\)\(6\)](#) ["Goldberg, Joseph"; "Reynolds, Carole L."; Morgan, Hallee \(CFPB\); McGill, Yolanda \(CFPB\); Campbell, Patrick \(CFPB\)"; Parker Rose, Cheryl \(CFPB\)](#)
Cc: [Parker Rose, Cheryl \(CFPB\)](#)
Subject: Bureau's supervisory authority and the MLA
Date: Wednesday, November 21, 2018 11:56:56 AM
Attachments: [2018.11.21 MM to Lamb Jones Rosen et al MLA.pdf](#)

Email Addresses redacted:
Amy Patel (FRB)
Amy Henderson (FRB)
Michaels (FRB)
Vivian Wong (FRB)
Jorge Aguilar (OCC)
Kathryn Ray (OCC)
Paul Reymann (OCC)
Daniels (OCC)
Jennifer SlaglePeck (FDIC)
Norcom(FDIC)
Whitaker (FDIC)
Singleton (FDIC)
Jaeger (FDIC)

Good morning fellow MLA working group members.

Attached is a letter from our Acting Director to Congress answering recent questions about the Bureau's supervisory authority and the Military Lending Act (MLA).

As you will read in the letter, it is the Bureau's position that the Bureau does not have a clear grant of that authority from Congress to continue examining for MLA compliance and that the Bureau will cease exercising such authority.

The Acting Director has committed to enforcing the MLA both when violations are uncovered during the normal enforcement process, and when potential violations are identified during examinations for compliance with Federal consumer financial laws. The Acting Director also stated he strongly supports legislation to grant the Bureau authority to supervise for MLA compliance.

I have no doubt that there will be questions about this announcement, please don't hesitate to reach to us. Please share this letter with the relevant folks at each of your agencies.

I hope everyone has a fun and safe Thanksgiving,

Patrick Campbell
Acting Assistant Director
Office of Servicemember Affairs
Bureau of Consumer Financial Protection

(b)(6)

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Bureau of Consumer Financial Protection
1700 G Street NW
Washington, D.C. 20552



November 21, 2018

The Honorable Conor Lamb
U.S. House of Representatives
2332 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Walter B. Jones
U.S. House of Representatives
2333 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Jacky Rosen
U.S. House of Representatives
413 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Lamb, Congressman Jones, and Congresswoman Rosen:

Thank you for your letter regarding the Bureau of Consumer Financial Protection's (Bureau's) supervisory authority and the Military Lending Act (MLA).

Soon after President Trump appointed me as Acting Director of the Bureau, as part of my commitment to execute the laws as written, I began a review of all of the Bureau's practices to ensure they are, in fact, authorized by law. In the course of that review, I found that it was not clear the Congress had given the Bureau statutory authority to conduct examinations for compliance with the MLA. Upon further analysis, I have concluded that the better reading of the relevant statutory provisions is that the Bureau does not have such authority, and, accordingly, should cease exercising such authority without a clear grant of that authority from Congress.

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I am committed to supporting servicemembers and their families, just as I have been throughout my public service. I will do everything I can within the bounds of the law to protect them. **That effort includes enforcing the MLA both when violations are uncovered during the normal enforcement process, and when potential violations are identified during examinations for compliance with Federal consumer financial laws, all of which the law currently permits.** I do not believe, however, that the law permits the Bureau to launch examinations specifically to look for MLA violations or impose supervisory (as opposed to enforcement) remedies. That is why I would strongly support legislation to grant the Bureau authority to supervise for MLA compliance.

But, my desire in this regard does not absolve me of my duty to execute the laws as written. To ignore the limits of the Bureau's statutory authority in service of a policy goal I favor would erode the rule of law. It would give me, an unelected bureaucrat, power that rightfully belongs to the American people and their elected representatives, such as you.

Under its prior Director, the Bureau determined to commence MLA examinations because the MLA had been amended to provide the Bureau with certain *enforcement* authority. Those amendments to the MLA did not, however, provide the Bureau with *supervisory* authority with respect to that statute, and the Bureau's supervisory authority is clearly distinct from its enforcement authority under the Bureau's organic statute, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA).¹ Thus, any authority to conduct examinations for compliance with the MLA would need to be found in the DFA.

Based on a careful reading, I do not believe that the DFA is properly understood to provide such authority. Under the DFA, the Bureau's supervision authority is described in sections 1024(b)(1) (relating to nondepository institutions) and 1025(b)(1) (relating to large depository

¹ The nature and scope of the Bureau's supervisory authorities are generally established in subtitle B of Title X, and the nature and scope of its enforcement authorities in subtitle E. The scope of the Bureau's enforcement powers is broader than that of its supervisory powers in various respects. For instance, the Bureau may enforce the law against, but may not supervise, non-depository financial institutions that are not: mortgage originators, brokers, or servicers; larger participants, as defined by Bureau rule, in a market for consumer financial products or services (such as consumer debt collection); originators of private student loans; payday lenders; or those the Bureau has reasonable cause to determine, by order after notice and opportunity to respond, have engaged or are engaging in conduct that poses risks to consumers in the offering or provision of consumer financial products or services. 12 U.S.C. 5514(a)(1).

institutions and credit unions). Section 1024(b)(1) is quoted below, and section 1025(b)(1) is identical except that it contains the additional or alternative language indicated in brackets:

(b) Supervision.—

- (1) In General – The Bureau shall [have exclusive authority to] require reports and conduct examinations on a periodic basis of persons described in subsection (a)(1) [(a)] for purposes of –
- (A) assessing compliance with the requirements of Federal consumer financial law[s];
 - (B) obtaining information about the activities [subject to such laws] and [the associated] compliance systems or procedures of such person[s]; and
 - (C) detecting and assessing [associated] risks to consumers and to markets for consumer financial products and services.

Under each subparagraph (A), the Bureau is authorized to assess compliance only with “Federal consumer financial law.” The MLA is not a “Federal consumer financial law,” as that term is defined in DFA section 1002(14), and the relevant amendments to the MLA did not define the MLA as a Federal consumer financial law or specify that it should be treated as such. Accordingly, it seems quite clear that the Bureau lacks authority to “assess compliance with the requirements of” the MLA under those subparagraphs.

In addition, I do not believe that the Bureau’s other supervisory authorities in the DFA – related to compliance systems and procedures and risks to consumers and markets – properly can be read to weaken that clear conclusion. For one thing, such a broad statutory reading offers little to restrain the Bureau from supervising for compliance with a wide variety of other laws not contemplated by Congress. And, in addition to subjecting large depository institutions and credit unions to potentially duplicative supervision – a result the DFA was clearly designed to avoid – such a reading would undermine Congress’s careful delineation of the statutes for which the Bureau was to assess compliance in its examinations and other supervisory activities.

The fact of the matter is that when Congress created the Bureau in 2010, it did not give it the authority to supervise for compliance with the MLA. And, in 2013, when Congress amended the MLA, it clearly gave the Bureau enforcement authority, but not supervisory authority. The Bureau cannot pretend otherwise.

I respectfully request that Congress fix this problem, and will happily work with you to achieve a legislative solution.

Sincerely,



Mick Mulvaney
Acting Director

cc: The Honorable Thomas R. Suozzi, Member of Congress
The Honorable Nydia M. Velázquez, Member of Congress
The Honorable Seth Moulton, Member of Congress
The Honorable Denny Heck, Member of Congress
The Honorable A. Donald McEachin, Member of Congress
The Honorable André Carson, Member of Congress
The Honorable Bill Foster, Member of Congress
The Honorable Ron Kind, Member of Congress
The Honorable Raúl M. Grijalva, Member of Congress
The Honorable Marcy Kaptur, Member of Congress
The Honorable Eleanor Holmes Norton, Member of Congress
The Honorable Yvette D. Clarke, Member of Congress
The Honorable Jan Schakowsky, Member of Congress
The Honorable Julia Brownley, Member of Congress
The Honorable Mike Doyle, Member of Congress
The Honorable Tom O'Halleran, Member of Congress
The Honorable Mark Takano, Member of Congress
The Honorable Grace F. Napolitano, Member of Congress
The Honorable Ann McLane Kuster, Member of Congress
The Honorable Mark Pocan, Member of Congress
The Honorable Adam B. Schiff, Member of Congress
The Honorable Lisa Blunt Rochester, Member of Congress
The Honorable Al Green, Member of Congress
The Honorable Robert A. Brady, Member of Congress
The Honorable Scott Peters, Member of Congress
The Honorable John Garamendi, Member of Congress
The Honorable Donald S. Beyer, Jr., Member of Congress
The Honorable Earl Blumenauer, Member of Congress
The Honorable Debbie Wasserman Schultz, Member of Congress
The Honorable Suzan DelBene, Member of Congress
The Honorable Sean Patrick Maloney, Member of Congress
The Honorable Jackie Speier, Member of Congress
The Honorable Stephen F. Lynch, Member of Congress
The Honorable Ruben Kihuen, Member of Congress
The Honorable Colleen Hanabusa, Member of Congress

The Honorable John K. Delaney, Member of Congress
The Honorable Alma S. Adams, Ph.D., Member of Congress
The Honorable Mike Thompson, Member of Congress
The Honorable Albio Sires, Member of Congress
The Honorable Daniel W. Lipinski, Member of Congress
The Honorable Katherine Clark, Member of Congress
The Honorable Tulsi Gabbard, Member of Congress
The Honorable Carol Shea-Porter, Member of Congress
The Honorable James N. Mattis, Secretary of Defense

From: [Campbell, Patrick \(CFPB\)](#)
To: [Manna, Meredith \(CFPB\)](#)
Cc: [Halsey, Melissa \(CFPB\)](#)
Subject: RE: PRECLEARANCE REVIEW REQUEST: Response to Congresswoman Jack Rosen et al on MLA
Date: Friday, September 14, 2018 1:25:45 PM
Attachments: [2018.09.12 Response to Rosen et al MLA preclearance OSA 20180914.docx](#)

Thank you for opportunity to provide feedback on this draft MLA letter.

Attached are OSA's comments and feedback.

Please let us know if you need anything else from us.

Patrick Campbell
Acting Assistant Director
Office of Servicemember Affairs
Bureau of Consumer Financial Protection

(b)(6)

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From: Manna, Meredith (CFPB)
Sent: Wednesday, September 12, 2018 3:35 PM
To: CFPB_OGC_Clearance (b)(6); CFPB_SEFL_Clearance (b)(6); Latell, Catherine (CFPB) (b)(6); Samburg, Mark (CFPB) (b)(6); CFPB_CEE_Clearance (b)(6); Evans, Kristen (CFPB) (b)(6); Campbell, Patrick (CFPB) (b)(6); CFPB_RMR_Clearance (b)(6); Galed, Simon (CFPB) (b)(6); Davies, Misha (CFPB) (b)(6)
Cc: Martinez, Zixta (CFPB) (b)(6); Galicia, Catherine (CFPB) (b)(6); Pippin, Matthew (CFPB) (b)(6); Gold-Ramirez, Shaakira (CFPB) (b)(6); Hussain, Laura (CFPB) (b)(6)
Subject: PRECLEARANCE REVIEW REQUEST: Response to Congresswoman Jack Rosen et al on MLA

Good afternoon,

Attached for preclearance review and comment is a draft response letter to Congresswoman Jacky Rosen (NV) and other members of the House Committee on Armed Services about Military Lending Act supervision. Please note the letter also includes an addendum. The incoming letter is attached for your reference.

Please send any edits or comments to me by **4pm, Friday, September 14th**.

1700 G Street NW,
Washington, DC 20552



[date]

The Honorable Jacky Rosen
U.S. House of Representatives
413 Cannon House Office Building
Washington, D.C. 20515

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(b)(5)

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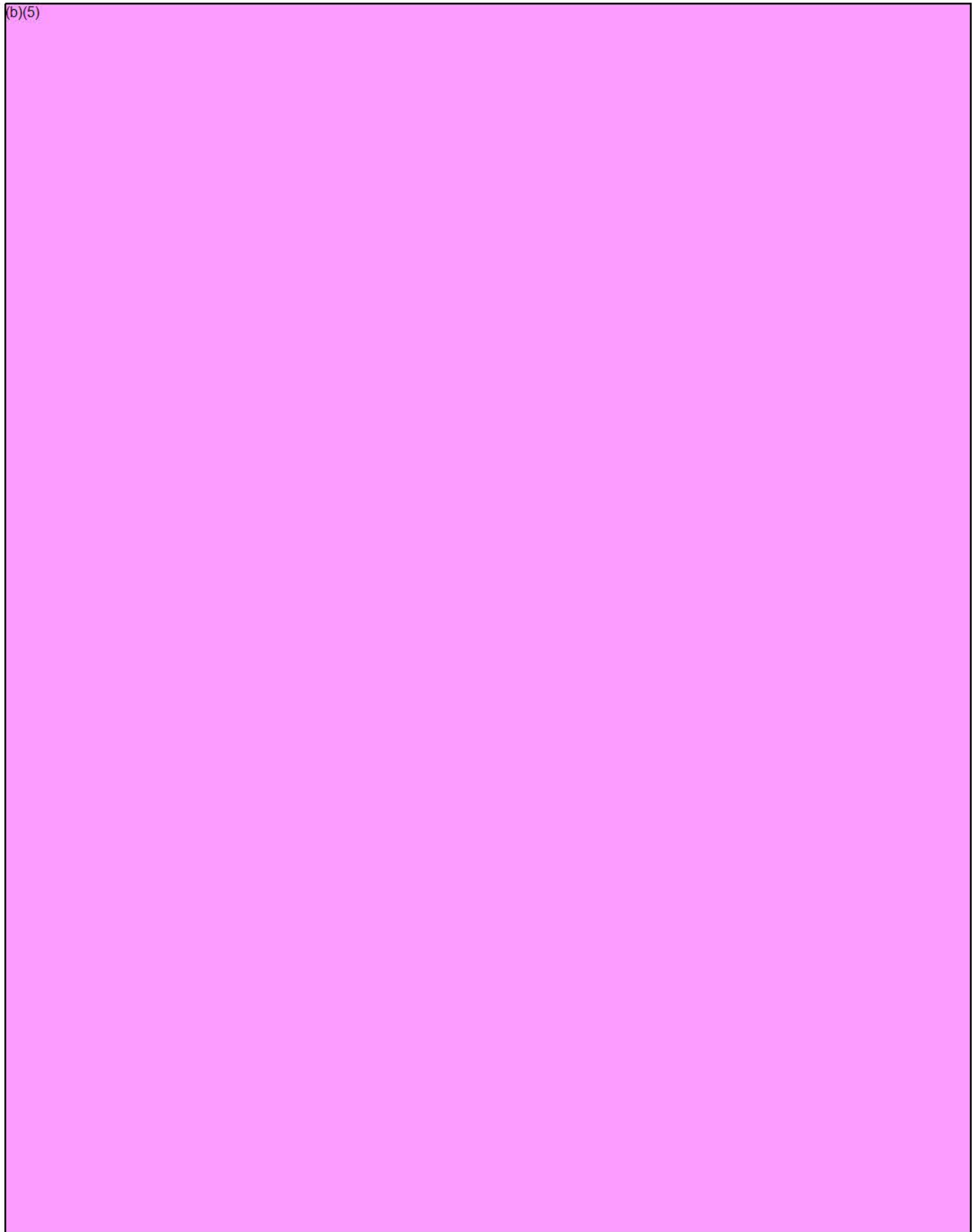
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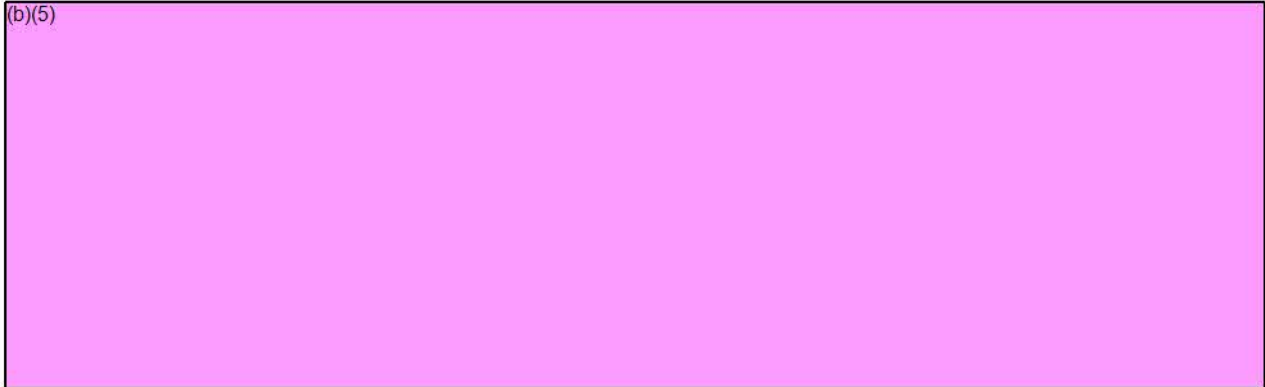
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From: [Campbell, Patrick \(CFPB\)](#)
To: [CFPB Executive Secretary](#)
Cc: [Binecki, Mary \(CFPB\)](#); [Halsey, Melissa \(CFPB\)](#); [Gillespie, Katherine \(CFPB\)](#); [Greenwood, Sheila \(CFPB\)](#); [Hillebrand, Gail \(CFPB\)](#); [Galicja, Catherine \(CFPB\)](#); [Manna, Meredith \(CFPB\)](#)
Subject: RE: CLEARANCE REVIEW REQUEST: Response Letter to Rep. Rosen et al on Military Lending Act
Date: Thursday, October 25, 2018 3:01:13 PM
Attachments: [2018.10.25 Response to Rosen et al MLA clearance OSA edits 20181025.docx](#)

Good afternoon Exec Sec.

Thank you for the opportunity to review this response to Rep. Rosen. Attached is OSA's feedback on that letter.

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If anyone has questions about our feedback please don't hesitate to reach out.

Patrick Campbell
Acting Assistant Director
Office of Servicemember Affairs
Bureau of Consumer Financial Protection

(b)(6)



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From: Binecki, Mary (CFPB)
Sent: Thursday, October 25, 2018 10:14 AM
To: CFPB_Executive Secretary (b)(6)
Cc: Galicja, Catherine (CFPB) (b)(6); Manna, Meredith (CFPB)
(b)(6); Pippin, Matthew (CFPB) (b)(6); Mihalache, Valentin (CFPB) (b)(6); Johnson, Brian (CFPB) (b)(6)
(b)(6); Blankenstein, Eric (CFPB) (b)(6); D'Angelo, Chris (CFPB) (b)(6); Reardon, Colin (CFPB) (b)(6)
Latell, Catherine (CFPB) (b)(6); McLeod, Mary (CFPB)
(b)(6); Van Meter, Stephen (CFPB) (b)(6); Coleman, John (CFPB) (b)(6); Hussain, Laura (CFPB) (b)(6)

Campbell, Patrick (CFPB) (b)(6); Halsey, Melissa (CFPB)

(b)(6)

Subject: CLEARANCE REVIEW REQUEST: Response Letter to Rep. Rosen et al on Military Lending Act

Good morning,

Attached for clearance review is a draft response letter to Congresswoman Jacky Rosen (NV) and others on the Military Lending Act.

(b)(5)

Mary Kate Binecki

External Affairs Front Office

Mobile: (b)(6)

Phone:

Bureau of Consumer Financial Protection

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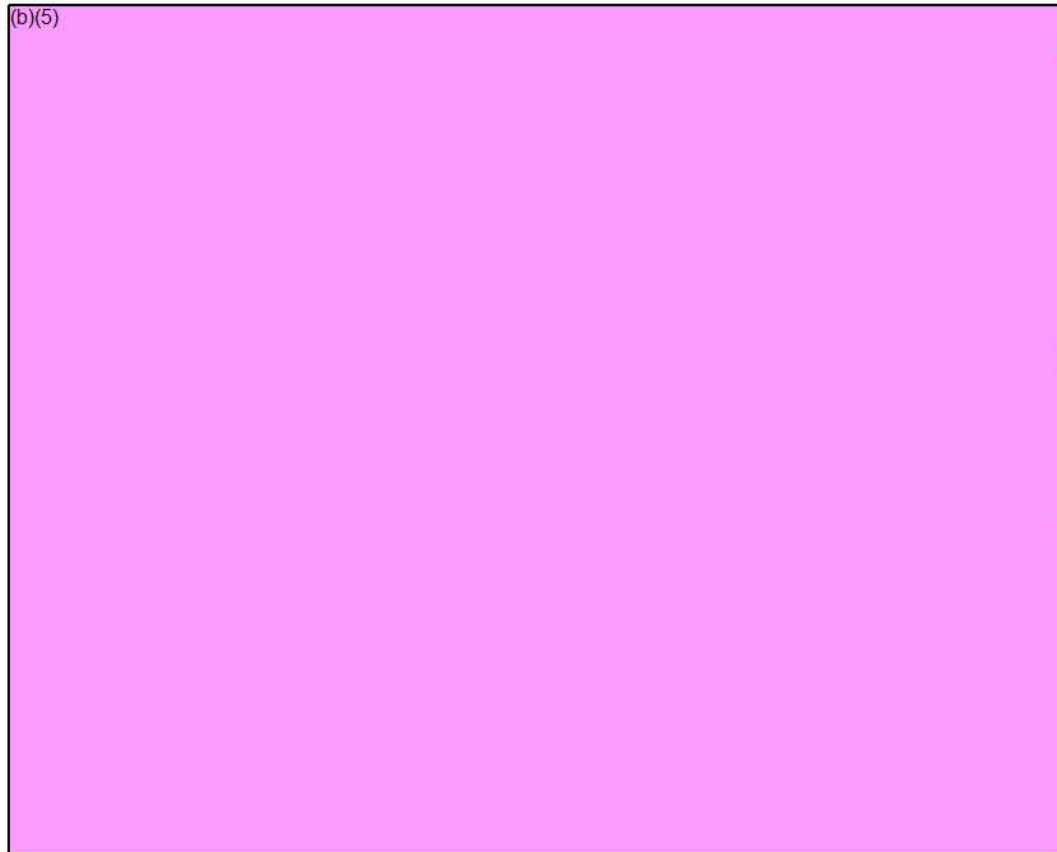
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Washington, DC 20552



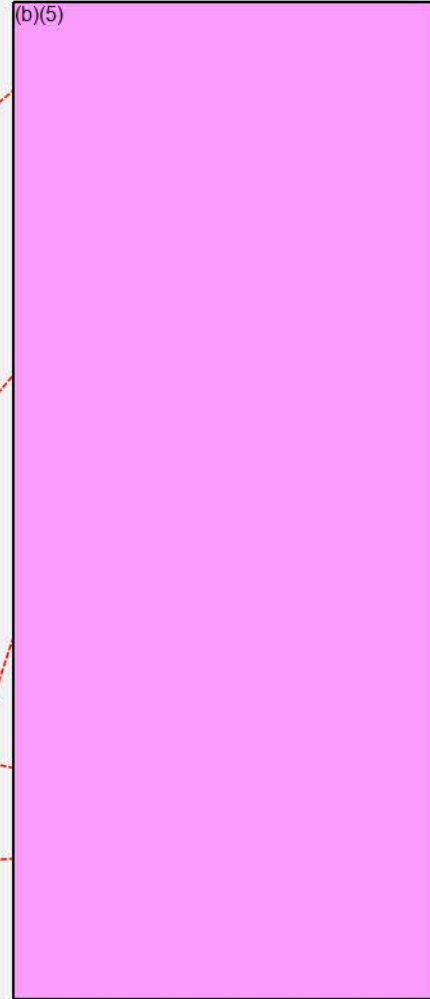
[date]

The Honorable Jacky Rosen
U.S. House of Representatives
413 Cannon House Office Building
Washington, D.C. 20515

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Sincerely,

Mick Mulvaney
Acting Director

Letter to the Hon. Jacky Rosen

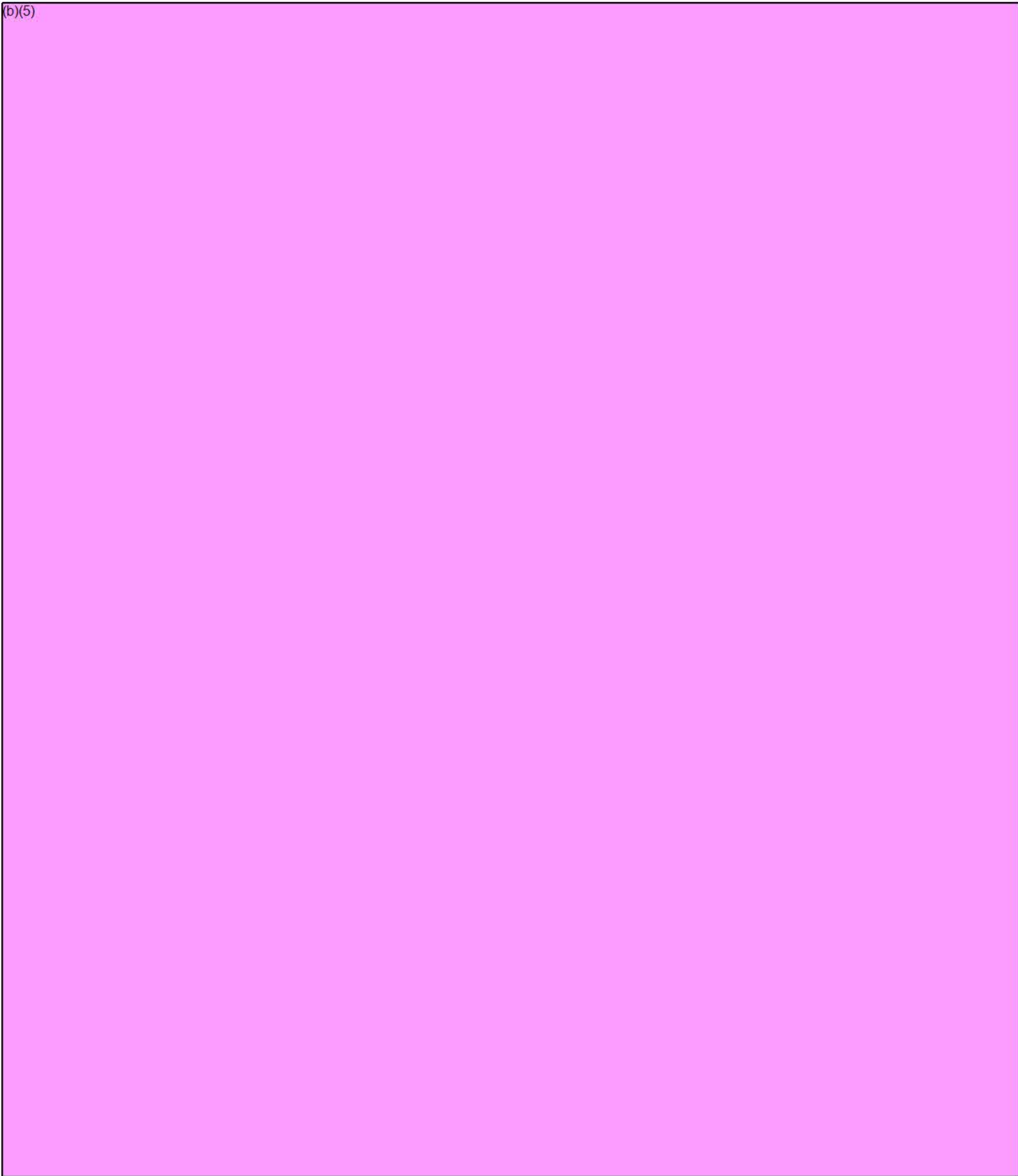
[date]

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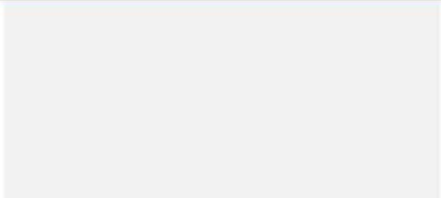
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Bureau of Consumer Financial Protection
1700 G Street NW
Washington, D.C. 20552



November 21, 2018

The Honorable Conor Lamb
U.S. House of Representatives
2332 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Walter B. Jones
U.S. House of Representatives
2333 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Jacky Rosen
U.S. House of Representatives
413 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Lamb, Congressman Jones, and Congresswoman Rosen:

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Soon after President Trump appointed me as Acting Director of the Bureau, as part of my commitment to execute the laws as written, I began a review of all of the Bureau's practices to ensure they are, in fact, authorized by law. In the course of that review, I found that it was not clear the Congress had given the Bureau statutory authority to conduct examinations for compliance with the MLA. Upon further analysis, I have concluded that the better reading of the relevant statutory provisions is that the Bureau does not have such authority, and, accordingly, should cease exercising such authority without a clear grant of that authority from Congress.

consumerfinance.gov

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But, my desire in this regard does not absolve me of my duty to execute the laws as written. To ignore the limits of the Bureau's statutory authority in service of a policy goal I favor would erode the rule of law. It would give me, an unelected bureaucrat, power that rightfully belongs to the American people and their elected representatives, such as you.

Under its prior Director, the Bureau determined to commence MLA examinations because the MLA had been amended to provide the Bureau with certain *enforcement* authority. Those amendments to the MLA did not, however, provide the Bureau with *supervisory* authority with respect to that statute, and the Bureau's supervisory authority is clearly distinct from its enforcement authority under the Bureau's organic statute, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA).¹ Thus, any authority to conduct examinations for compliance with the MLA would need to be found in the DFA.

Based on a careful reading, I do not believe that the DFA is properly understood to provide such authority. Under the DFA, the Bureau's supervision authority is described in sections 1024(b)(1) (relating to nondepository institutions) and 1025(b)(1) (relating to large depository

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institutions and credit unions). Section 1024(b)(1) is quoted below, and section 1025(b)(1) is identical except that it contains the additional or alternative language indicated in brackets:

(b) Supervision.—

- (1) In General – The Bureau shall [have exclusive authority to] require reports and conduct examinations on a periodic basis of persons described in subsection (a)(1) [(a)] for purposes of –
- (A) assessing compliance with the requirements of Federal consumer financial law[s];
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Under each subparagraph (A), the Bureau is authorized to assess compliance only with “Federal consumer financial law.” The MLA is not a “Federal consumer financial law,” as that term is defined in DFA section 1002(14), and the relevant amendments to the MLA did not define the MLA as a Federal consumer financial law or specify that it should be treated as such. Accordingly, it seems quite clear that the Bureau lacks authority to “assess compliance with the requirements of” the MLA under those subparagraphs.

In addition, I do not believe that the Bureau’s other supervisory authorities in the DFA – related to compliance systems and procedures and risks to consumers and markets – properly can be read to weaken that clear conclusion. For one thing, such a broad statutory reading offers little to restrain the Bureau from supervising for compliance with a wide variety of other laws not contemplated by Congress. And, in addition to subjecting large depository institutions and credit unions to potentially duplicative supervision – a result the DFA was clearly designed to avoid – such a reading would undermine Congress’s careful delineation of the statutes for which the Bureau was to assess compliance in its examinations and other supervisory activities.

The fact of the matter is that when Congress created the Bureau in 2010, it did not give it the authority to supervise for compliance with the MLA. And, in 2013, when Congress amended the MLA, it clearly gave the Bureau enforcement authority, but not supervisory authority. The Bureau cannot pretend otherwise.

I respectfully request that Congress fix this problem, and will happily work with you to achieve a legislative solution.

Sincerely,



Mick Mulvaney
Acting Director

cc: The Honorable Thomas R. Suozzi, Member of Congress
The Honorable Nydia M. Velázquez, Member of Congress
The Honorable Seth Moulton, Member of Congress
The Honorable Denny Heck, Member of Congress
The Honorable A. Donald McEachin, Member of Congress
The Honorable André Carson, Member of Congress
The Honorable Bill Foster, Member of Congress
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The Honorable Yvette D. Clarke, Member of Congress
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The Honorable Colleen Hanabusa, Member of Congress

The Honorable John K. Delaney, Member of Congress
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The Honorable Katherine Clark, Member of Congress
The Honorable Tulsi Gabbard, Member of Congress
The Honorable Carol Shea-Porter, Member of Congress
The Honorable James N. Mattis, Secretary of Defense

Bureau of Consumer Financial Protection
1700 G Street NW
Washington, D.C. 20552



November 21, 2018

The Honorable Jack Reed
Ranking Member
Senate Committee on Armed Services
728 Hart Senate Office Building
Washington, D.C. 20510

Dear Ranking Member Reed:

Thank you for your letter regarding the Bureau of Consumer Financial Protection's (Bureau's) supervisory authority and the Military Lending Act (MLA).

Soon after President Trump appointed me as Acting Director of the Bureau, as part of my commitment to execute the laws as written, I began a review of all of the Bureau's practices to ensure they are, in fact, authorized by law. In the course of that review, I found that it was not clear the Congress had given the Bureau statutory authority to conduct examinations for compliance with the MLA. Upon further analysis, I have concluded that the better reading of the relevant statutory provisions is that the Bureau does not have such authority, and, accordingly, should cease exercising such authority without a clear grant of that authority from Congress.

I am committed to supporting servicemembers and their families, just as I have been throughout my public service. I will do everything I can within the bounds of the law to protect them. **That effort includes enforcing the MLA both when violations are uncovered during the normal enforcement process, and when potential violations are identified during examinations for compliance with Federal consumer financial laws, all of which the law currently permits.** I do not believe, however, that the law

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permits the Bureau to launch examinations specifically to look for MLA violations or impose supervisory (as opposed to enforcement) remedies. That is why I would strongly support legislation to grant the Bureau authority to supervise for MLA compliance.

But, my desire in this regard does not absolve me of my duty to execute the laws as written. To ignore the limits of the Bureau's statutory authority in service of a policy goal I favor would erode the rule of law. It would give me, an unelected bureaucrat, power that rightfully belongs to the American people and their elected representatives, such as you.

Under its prior Director, the Bureau determined to commence MLA examinations because the MLA had been amended to provide the Bureau with certain *enforcement* authority. Those amendments to the MLA did not, however, provide the Bureau with *supervisory* authority with respect to that statute, and the Bureau's supervisory authority is clearly distinct from its enforcement authority under the Bureau's organic statute, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA).¹ Thus, any authority to conduct examinations for compliance with the MLA would need to be found in the DFA.

Based on a careful reading, I do not believe that the DFA is properly understood to provide such authority. Under the DFA, the Bureau's supervision authority is described in sections 1024(b)(1) (relating to nondepository institutions) and 1025(b)(1) (relating to large depository institutions and credit unions). Section 1024(b)(1) is quoted below, and section 1025(b)(1) is identical except that it contains the additional or alternative language indicated in brackets:

(b) Supervision.—

(1) In General— The Bureau shall [have exclusive authority to] require reports and conduct examinations on a periodic basis of persons described in subsection (a)(1) [(a)] for purposes of—

¹ The nature and scope of the Bureau's supervisory authorities are generally established in subtitle B of Title X, and the nature and scope of its enforcement authorities in subtitle E. The scope of the Bureau's enforcement powers is broader than that of its supervisory powers in various respects. For instance, the Bureau may enforce the law against, but may not supervise, non-depository financial institutions that are not: mortgage originators, brokers, or servicers; larger participants, as defined by Bureau rule, in a market for consumer financial products or services (such as consumer debt collection); originators of private student loans; payday lenders; or those the Bureau has reasonable cause to determine, by order after notice and opportunity to respond, have engaged or are engaging in conduct that poses risks to consumers in the offering or provision of consumer financial products or services. 12 U.S.C. 5514(a)(1).

- (A) assessing compliance with the requirements of Federal consumer financial law[s];
- (B) obtaining information about the activities [subject to such laws] and [the associated] compliance systems or procedures of such person[s]; and
- (C) detecting and assessing [associated] risks to consumers and to markets for consumer financial products and services.


Under each subparagraph (A), the Bureau is authorized to assess compliance only with “Federal consumer financial law.” The MLA is not a “Federal consumer financial law,” as that term is defined in DFA section 1002(14), and the relevant amendments to the MLA did not define the MLA as a Federal consumer financial law or specify that it should be treated as such. Accordingly, it seems quite clear that the Bureau lacks authority to “assess compliance with the requirements of” the MLA under those subparagraphs.

In addition, I do not believe that the Bureau’s other supervisory authorities in the DFA – related to compliance systems and procedures and risks to consumers and markets – properly can be read to weaken that clear conclusion. For one thing, such a broad statutory reading offers little to restrain the Bureau from supervising for compliance with a wide variety of other laws not contemplated by Congress. And, in addition to subjecting large depository institutions and credit unions to potentially duplicative supervision – a result the DFA was clearly designed to avoid – such a reading would undermine Congress’s careful delineation of the statutes for which the Bureau was to assess compliance in its examinations and other supervisory activities.

The fact of the matter is that when Congress created the Bureau in 2010, it did not give it the authority to supervise for compliance with the MLA. And, in 2013, when Congress amended the MLA, it clearly gave the Bureau enforcement authority, but not supervisory authority. The Bureau cannot pretend otherwise.

I respectfully request that Congress fix this problem, and will happily work with you to achieve a legislative solution.

Sincerely,



Mick Mulvaney
Acting Director

cc: The Honorable Sherrod Brown, Ranking Member, Senate Committee on Banking,
Housing, and Urban Affairs
The Honorable Bill Nelson, United States Senator
The Honorable Jon Tester, United States Senator
The Honorable Joe Donnelly, United States Senator
The Honorable Charles Schumer, United States Senator
The Honorable Richard Durbin, United States Senator
The Honorable Chris Van Hollen, United States Senator
The Honorable Mark Warner, United States Senator
The Honorable Catherine Cortez Masto, United States Senator
The Honorable Tim Kaine, United States Senator
The Honorable Doug Jones, United States Senator
The Honorable Robert Casey, Jr., United States Senator
The Honorable Jeanne Shaheen, United States Senator
The Honorable Robert Menendez, United States Senator
The Honorable Heidi Heitkamp, United States Senator
The Honorable Tammy Baldwin, United States Senator
The Honorable Mazie Hirono, United States Senator
The Honorable Kirsten Gillibrand, United States Senator
The Honorable Patty Murray, United States Senator
The Honorable Elizabeth Warren, United States Senator
The Honorable Jeff Merkley, United States Senator
The Honorable Tammy Duckworth, United States Senator
The Honorable Richard Blumenthal, United States Senator
The Honorable Brian Schatz, United States Senator
The Honorable Michael Bennet, United States Senator
The Honorable Bernie Sanders, United States Senator
The Honorable Sheldon Whitehouse, United States Senator
The Honorable Debbie Stabenow, United States Senator
The Honorable Patrick Leahy, United States Senator
The Honorable Cory A. Booker, United States Senator
The Honorable Chris Coons, United States Senator
The Honorable Edward J. Markey, United States Senator
The Honorable Ron Wyden, United States Senator
The Honorable Gary Peters, United States Senator
The Honorable Tom Udall, United States Senator
The Honorable Claire McCaskill, United States Senator
The Honorable Thomas R. Carper, United States Senator
The Honorable Maria Cantwell, United States Senator
The Honorable Benjamin L. Cardin, United States Senator
The Honorable Tina Smith, United States Senator
The Honorable Joe Manchin, United States Senator
The Honorable Martin Heinrich, United States Senator
The Honorable Maggie Hassan, United States Senator
The Honorable Dianne Feinstein, United States Senator
The Honorable Christopher S. Murphy, United States Senator
The Honorable Angus King, United States Senator
The Honorable Amy Klobuchar, United States Senator

The Honorable Kamala Harris, United States Senator
The Honorable Mike Crapo, Chairman, Senate Committee on Banking, Housing, and
Urban Affairs

Bureau of Consumer Financial Protection
1700 G Street NW
Washington, D.C. 20552



November 21, 2018

The Honorable Jacky Rosen
U.S. House of Representatives
413 Cannon House Office Building
Washington, D.C. 20515

Dear Congresswoman Rosen:

Thank you for your letter regarding the Bureau of Consumer Financial Protection's (Bureau's) supervisory authority and the Military Lending Act (MLA).

Soon after President Trump appointed me as Acting Director of the Bureau, as part of my commitment to execute the laws as written, I began a review of all of the Bureau's practices to ensure they are, in fact, authorized by law. In the course of that review, I found that it was not clear the Congress had given the Bureau statutory authority to conduct examinations for compliance with the MLA. Upon further analysis, I have concluded that the better reading of the relevant statutory provisions is that the Bureau does not have such authority, and, accordingly, should cease exercising such authority without a clear grant of that authority from Congress.

I am committed to supporting servicemembers and their families, just as I have been throughout my public service. I will do everything I can within the bounds of the law to protect them. **That effort includes enforcing the MLA both when violations are uncovered during the normal enforcement process, and when potential violations are identified during examinations for compliance with Federal consumer financial laws, all of which the law currently permits.** I do not believe, however, that the law permits the Bureau to launch examinations specifically to look for MLA violations or impose

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supervisory (as opposed to enforcement) remedies. That is why I would strongly support legislation to grant the Bureau authority to supervise for MLA compliance.

But, my desire in this regard does not absolve me of my duty to execute the laws as written. To ignore the limits of the Bureau's statutory authority in service of a policy goal I favor would erode the rule of law. It would give me, an unelected bureaucrat, power that rightfully belongs to the American people and their elected representatives, such as you.

Under its prior Director, the Bureau determined to commence MLA examinations because the MLA had been amended to provide the Bureau with certain *enforcement* authority. Those amendments to the MLA did not, however, provide the Bureau with *supervisory* authority with respect to that statute, and the Bureau's supervisory authority is clearly distinct from its enforcement authority under the Bureau's organic statute, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA).¹ Thus, any authority to conduct examinations for compliance with the MLA would need to be found in the DFA.

Based on a careful reading, I do not believe that the DFA is properly understood to provide such authority. Under the DFA, the Bureau's supervision authority is described in sections 1024(b)(1) (relating to nondepository institutions) and 1025(b)(1) (relating to large depository institutions and credit unions). Section 1024(b)(1) is quoted below, and section 1025(b)(1) is identical except that it contains the additional or alternative language indicated in brackets:

(b) Supervision.—

(1) In General – The Bureau shall [have exclusive authority to] require reports and conduct examinations on a periodic basis of persons described in subsection (a)(1) [(a)] for purposes of –

(A) assessing compliance with the requirements of Federal consumer financial law[s];

¹ The nature and scope of the Bureau's supervisory authorities are generally established in subtitle B of Title X, and the nature and scope of its enforcement authorities in subtitle E. The scope of the Bureau's enforcement powers is broader than that of its supervisory powers in various respects. For instance, the Bureau may enforce the law against, but may not supervise, non-depository financial institutions that are not: mortgage originators, brokers, or servicers; larger participants, as defined by Bureau rule, in a market for consumer financial products or services (such as consumer debt collection); originators of private student loans; payday lenders; or those the Bureau has reasonable cause to determine, by order after notice and opportunity to respond, have engaged or are engaging in conduct that poses risks to consumers in the offering or provision of consumer financial products or services. 12 U.S.C. 5514(a)(1).

- (B) obtaining information about the activities [subject to such laws] and [the associated] compliance systems or procedures of such person[s]; and
- (C) detecting and assessing [associated] risks to consumers and to markets for consumer financial products and services.

Under each subparagraph (A), the Bureau is authorized to assess compliance only with “Federal consumer financial law.” The MLA is not a “Federal consumer financial law,” as that term is defined in DFA section 1002(14), and the relevant amendments to the MLA did not define the MLA as a Federal consumer financial law or specify that it should be treated as such. Accordingly, it seems quite clear that the Bureau lacks authority to “assess compliance with the requirements of” the MLA under those subparagraphs.

In addition, I do not believe that the Bureau’s other supervisory authorities in the DFA – related to compliance systems and procedures and risks to consumers and markets – properly can be read to weaken that clear conclusion. For one thing, such a broad statutory reading offers little to restrain the Bureau from supervising for compliance with a wide variety of other laws not contemplated by Congress. And, in addition to subjecting large depository institutions and credit unions to potentially duplicative supervision – a result the DFA was clearly designed to avoid – such a reading would undermine Congress’s careful delineation of the statutes for which the Bureau was to assess compliance in its examinations and other supervisory activities.

The fact of the matter is that when Congress created the Bureau in 2010, it did not give it the authority to supervise for compliance with the MLA. And, in 2013, when Congress amended the MLA, it clearly gave the Bureau enforcement authority, but not supervisory authority. The Bureau cannot pretend otherwise.

I respectfully request that Congress fix this problem, and will happily work with you to achieve a legislative solution.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mick Mulvaney', with the date '3/27' written below it.

Mick Mulvaney
Acting Director

cc: The Honorable Seth Moulton, Member of Congress
The Honorable Rick Larsen, Member of Congress
The Honorable Beto O'Rourke, Member of Congress
The Honorable Colleen Hanabusa, Member of Congress
The Honorable Tulsi Gabbard, Member of Congress
The Honorable James Langevin, Member of Congress
The Honorable Salud O. Carbajal, Member of Congress
The Honorable A. Donald McEachin, Member of Congress
The Honorable Anthony G. Brown, Member of Congress
The Honorable Ruben Gallego, Member of Congress
The Honorable Tom O'Halloran, Member of Congress
The Honorable Carol Shea-Porter, Member of Congress