

C A M P A I G N F O R ACCOUNTABILITY

August 17, 2017

By email: CFPB_FOIA@consumerfinance.gov

Consumer Financial Protection Bureau
Attn: Chief FOIA Officer
1700 G Street, NW
Washington, DC 20552

Re: Freedom of Information Act Request

Dear Sir or Madam:

Campaign for Accountability (“CfA”) seeks records from the Consumer Financial Protection Bureau (“CFPB”) regarding consumer complaints related to Clayton Homes. CfA’s request is for records from 2012 through the present. CfA makes this request for records, regardless of format, medium or physical characteristics, pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, 12 C.F.R. § 1070.10 *et seq.*

Background

A 2015 investigation by the *Seattle Times* and the *Center for Public Integrity* (“CPI”) revealed that Clayton Homes “relies on predatory sales practices, exorbitant fees, and interest rates that can exceed 15 percent, trapping many buyers in loans they can’t afford and in homes that are almost impossible to sell or refinance.”¹

According to the exposé, Berkshire Hathaway bought Clayton in 2003, building it into the mobile-home industry’s biggest manufacturer and lender. Clayton is also far and away the largest financer of mobile home purchases and it also sells property insurance on the homes and repossesses them when loans are not repaid.²

Berkshire Hathaway Chairman Warren Buffet has stated, “Home purchases should involve an honest-to-God down payment of at least 10% and monthly payments that can be comfortably handled by the borrower’s income,” which should be verified.³

Nevertheless, the *Seattle Times*/CPI investigation revealed that Clayton dealers sold homes with no cash down payments, many borrowers were convinced to take on payments they could ill-afford based on promises of future, cheaper refinancing, and the average loan

¹ Mike Baker and Daniel Wagner, *The Mobile-Home Trap: How a Warren Buffett Empire Preys on the Poor*, *Seattle Times*, April 2, 2015 available at <http://www.seattletimes.com/business/real-estate/the-mobile-home-trap-how-a-warren-buffett-empire-preys-on-the-poor/>.

² *Id.*

³ *Id.*

term actually increased.⁴ Further, Clayton rarely refinances loans. The company was responsible for less than 1 percent of mobile-home refinancings between 2010 to 2013, but made one-third of all purchases of loans during the same period.⁵

According to the news reports, Clayton Homes' subprime lender, Vanderbilt Mortgage, "baits [minority home buyers] into costly subprime loans," and charges minority borrowers "substantially higher rates" than their white counterparts.⁶ In fact, the investigation found, Vanderbilt "typically charges black people who make over \$75,000 a year slightly more than white people who make only \$35,000."⁷

In the wake of these revelations, in January 2016, several members of Congress, including Reps. Maxine Waters (D-CA), Keith Ellison (D-MN), Emanuel Cleaver (D-MO), and Mike Capuano (D-MA) asked both the CFPB and the Department of Justice to investigate. As the members wrote:

Clayton is the nation's largest manufactured housing company and has a 'near monopolistic' grip on lending to minority borrowers seeking financing for manufactured housing reaching nearly 72% of African-American borrowers, 56% of Latino borrowers and 53% of Native American borrowers.⁸

CFPB responded to the letter, stating the agency was aware of the media reports and "evaluating actions" it might take in response,⁹ but there are no reports of any further action. Meanwhile, Clayton has been expanding rapidly.

Requested Records

CfA seeks records regarding Clayton Homes, Vanderbilt Mortgage, and Clayton's parent company, Berkshire Hathaway. CfA seeks not only complaints filed against any of these entities, but also intra and inter-agency communications of issues related to such complaints, and communications about the issues raised in any such complaints. This request also includes any communications with Clayton Homes, Vanderbilt Mortgage, and Berkshire Hathaway.

Please search for responsive records regardless of format, medium, or physical characteristics. Where possible, please produce records electronically, in PDF or TIF format on a CD-ROM. We seek records of any kind, including electronic records,

⁴ *Id.*

⁵ *Id.*

⁶ Daniel Wagner and Mike Baker, *Warren Buffett's Company Wants to Sell You a Mobile Home*, *BuzzFeed News/Seattle Times*, December 26, 2015 available at <https://www.buzzfeed.com/danielwagner/warren-buffetts-predatory-lender-charges-minorities-a-lot-mo>.

⁷ *Id.*

⁸ Letter from Reps. Maxine Waters, Keith Ellison, Emanuel Cleaver and Michael E. Capuano to Attorney General Loretta Lynch and CFPB Director Richard Cordray, January 12, 2016 available at <https://democrats-financialservices.house.gov/news/documentsingle.aspx?DocumentID=399573>.

⁹ Letter from CFPB Director Richard Cordray to Rep. Keith Ellison, February 9, 2016, attached as Exhibit A.

audiotapes, videotapes, and photographs. Our request includes any letters, emails, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to these records.

If it is your position that any portion of the requested records is exempt from disclosure, CfA requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1972). 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.” *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979). Moreover, the *Vaughn* index must “describe each document or portion thereof withheld, and for **each** withholding it must discuss the consequences of supplying the sought-after information.” *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphasis added). 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.’” *Id.* at 224 (citing *Mead Data Central 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 reasonably segregable non-exempt portions of the requested records. *See* 5 U.S.C. § 552(b); 12 C.F.R. § 1070.18(b)(4). 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. *Mead Data Central*, 566 F.2d at 261. 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.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 12 C.F.R. § 1070.22(e), CfA requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. Moreover, as a 501(c)(3) organization, CfA is making this request primarily and fundamentally for non-commercial purposes. 5 U.S.C. § 552(a)(4)(A)(iii); 12 C.F.R. § 1070.22(e)(iii). *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

There is evidence that Clayton Homes and Vanderbilt Mortgage may have engaged in predatory pricing, preying in particular on minority and low-income consumers. The extent to which the CFPB has received complaints of abuses by Clayton Homes, Vanderbilt Mortgage and Berkshire Hathaway and has or may be taking action against these entities is a matter of public

interest. The *Seattle Times*, *BuzzFeed News*, and the *Center for Public Integrity* have published investigations that triggered congressional complaints.

Expedition

CfA requests that CFPB grant expedition in handling this request. Pursuant to 5 U.S.C. § 552(a)(6)(E)(i) and 12 C.F.R. § 1070.17(b)(2)(ii). I certify to be true and correct to the best of my knowledge and belief the urgent need for this information.

Expedition is available when a requestor demonstrates an urgency to inform the public concerning actual or alleged Federal government activity. 5 U.S.C. § 552(A)(6)(E)(v). In determining whether a requestor has demonstrated “urgency to inform” and, therefore, compelling need for the information, courts must consider three factors: 1) whether the request concerns a matter of current exigency to the American public; 2) whether the consequences of delaying a response will compromise a significant recognized interest; and 3) whether the request concerns federal government activity. H.R. REP. No. 104-795 at 26 (1996). The requestor must adequately explain the matter or activity and why the records are necessary to be provided on an expedited basis. 12 C.F.R. § 1070.17(b)(2)(i) and (ii).

Recent press reports indicate that Clayton Homes is substantially expanding; the company is moving into “site-built, \$250,000 and under housing market.”¹⁰ In only two years, the company has bought homebuilders in Atlanta, Georgia, Nashville, Tennessee, Kansas City, Missouri; Denver, Colorado, and, most recently, Birmingham, Alabama.¹¹

The company is now building approximately 2,500 to 3,000 homes a year.¹² Clayton was responsible for 45% of manufactured home sales in 2014,¹³ and has been expanding into site-built homes to attract consumers seeking slightly more customizable, and higher-priced housing.¹⁴

Not long ago, an investigative report revealed remarkably troublesome information about Clayton’s treatment of low-income and minority purchasers. Given the history of the 2008 financial crisis, which stemmed largely from the issuance of subprime loans, and the potential wrongdoing newspapers have alleged was engaged in by Clayton Homes, the company’s treatment of Americans as it expands to be one of the largest suppliers of housing in the country is of significant interest to the public.

¹⁰ Steve Jordon, Berkshire’s Clayton Homes Division Expanding into \$250,000-and Under Housing Market, *Omaha World-Herald*, August 2, 2017 (available at http://www.omaha.com/money/buffett/berkshire-s-clayton-homes-division-expanding-into--and-under/article_3b2ca330-80ab-5830-9a6a-eab66b92f8ac.html).

¹¹ *Id.*

¹² *Id.*

¹³ Anupreeta Das, Warren Buffett Defends Clayton Homes, *Wall Street Journal*, May 2, 2015 available at <https://www.wsj.com/articles/warren-buffett-defends-clayton-homes-1430584843>.

¹⁴ Hallie Busta, Warren Buffett's Clayton Homes snags top Kansas City, MO builder Summit Custom Homes, *Construction Dive*, November 2, 2016 available at <http://www.constructiondive.com/news/warren-buffetts-clayton-homes-snags-top-kansas-city-mo-builder-summit-cus/429662/>.

Further, whether and to what extent the CFPB, which is charged with protecting American consumers and which was asked to investigate this matter by several members of Congress, took action in response to these allegations would inform the public about federal government activity. This request for records is an effort to uncover information about Clayton's practices and what if any action CFBP took, and to provide Americans with important information before they make purchases they may have cause to regret.

As a result, there is a compelling need for the requested records, which are urgently required to inform the public concerning the activities that are the subject of this request. The value of the information will be lost if the information is not disseminated quickly.

In addition, CfA is a non-profit organization, and is engaged primarily in disseminating information it gathers from a variety of sources, including the FOIA, and seeks the information requested in this FOIA request for the express purpose of disseminating it to the public. Previously, CfA has disseminated information about payday lenders' ties to members of Congress, and to that industry's work with academics to create studies in support of payday lending. CfA also has worked to expose rooftop solar companies that prey upon the elderly, those living on fixed incomes, and non-native English speakers.

It is CfA's belief that by disseminating information about financing schemes that have a particularly deleterious impact on lower income or less sophisticated citizens, the public will be better able to evaluate the actions of our public officials to protect Americans and will have a more effective voice.

As with the Electronic Privacy Information Center and the ACLU, two organizations that the courts have found satisfy the criteria necessary to qualify for expedition,¹⁵ CfA "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience." *ACLU*, 321 F. Supp. 2d at 30 n.5, *quoting EPIC*, 241 F. Supp. 2d at 11.

Accordingly, CfA requests that this request be expedited, and submits that its request satisfies the criteria for expedition.

Conclusion

If possible, please send the requested records to me via email. Otherwise, please mail them to me at Campaign for Accountability, 611 Pennsylvania Ave, SE, #337, Washington, DC 20003.

¹⁵ See *ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 30 (D.D.C. 2004); *EPIC v. Dep't of Defense*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003).

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Finally, CfA welcomes the opportunity to discuss with you whether and to what extent this request can be narrowed or modified to better enable the CFPB to process it within the FOIA's deadlines. I can be reached at 202-780-5750 or dstevens@campaignforaccountability.org.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dan E Stevens", with a long horizontal flourish extending to the right.

Daniel Stevens
Executive Director

EXHIBIT A



Consumer Financial
Protection Bureau

1700 G Street, N.W., Washington, DC 20552

February 9, 2016

The Honorable Keith Ellison
U.S. House of Representatives
2263 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Ellison:

Thank you for your letter about allegations of potentially discriminatory lending and collection practices by some in the manufactured housing industry. Recent media reports detail troubling practices that may have harmed many innocent manufactured housing homeowners. The Consumer Financial Protection Bureau is aware of these reports and is evaluating actions we might take in response. Manufactured housing can serve vital housing needs in communities throughout the United States, and the Bureau is committed to ensuring that this market operates fairly and transparently.

While the Bureau cannot comment on or confirm any Bureau supervisory activity or investigations, the Bureau takes allegations of discriminatory or predatory lending practices very seriously. The Bureau's Office of Fair Lending and Equal Opportunity was specifically mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act, and it collaborates with divisions and offices across the Bureau to enhance fair, equitable, and nondiscriminatory access to credit for all consumers. The Office of Fair Lending provides oversight and enforcement of Federal fair lending laws; coordinates the Bureau's fair lending efforts with Federal agencies and State regulators; and works with private industry, fair lending, civil rights, consumer and community advocates to promote fair lending compliance and education.

As you note in your letter, the Bureau released a report in September 2014 which found that manufactured-home owners typically pay higher interest rates for their loans than borrowers whose homes were built onsite. The report also found that manufactured-home owners are more likely to be older, live in a rural area, or have lower net worth.¹ The Bureau also obtains important insights from complaints submitted by consumers, including complaints related to manufactured home financing. The Bureau continues to consider new data that may help to develop a more complete and current picture of the manufactured housing markets.

¹ See <http://www.consumerfinance.gov/newsroom/cfpb-finds-majority-of-manufactured-housing-borrowers-have-expensive-loans/>

One of the Bureau's stated goals in issuing its 2014 report was to encourage others to build greater knowledge of the manufactured housing market, the consumers in that market, and the differences between the site-built and manufactured housing markets. Investigations and media reports that highlight the manufactured housing market contribute to the public conversation about it and facilitate the Bureau's information-gathering.

For example, investigations that utilize Home Mortgage Disclosure Act data have historically been vital to highlighting issues of public concern in the mortgage market. The Bureau recently issued a final rule to improve information about the residential mortgage market by updating the HMDA regulation.² The final rule includes expanded information reporting requirements for manufactured housing loans that should help the Bureau and other stakeholders monitor developments in this market. The Bureau has also made the HMDA data more accessible and easier to use through its online tools.³

Our mortgage rules are designed to restrict certain practices and foster a thriving, more sustainable marketplace for all homeowners, including manufactured housing homeowners. The Ability-to-Repay rule protects consumers from irresponsible mortgage lending by requiring that lenders generally make a reasonable, good-faith determination that prospective borrowers have the ability to repay their loans. For manufactured home loans secured by real property, the mortgage servicing rules establish strong protections for homeowners facing foreclosure. The mortgage servicing rules also bring greater transparency to the market by providing clear and timely information to all homeowners, whether or not their loan is secured by real property, through monthly mortgage statements and early warnings before interest rate resets and adjustments.

The loan originator rule addresses certain practices that incentivized steering borrowers into risky or high-cost loans. Under the rule, employees of manufactured housing retailers can provide general information to consumers about financing without being subject to the loan originator rule. If employees of manufactured housing retailers, however, recommend a particular creditor or influence the consumer's decision they are considered loan originators and become subject to requirements of the rule, including certain character and fitness screening requirements and other qualification requirements.

The Bureau also finalized rules that strengthened consumer protections for high-cost mortgages, which manufactured housing loans disproportionately are. Among these protections is a requirement that escrow accounts be established for a minimum of five years for certain higher-priced mortgage loans, including escrowing applicable property taxes and premiums for mortgage-

² See <http://www.consumerfinance.gov/newsroom/cfpb-finalizes-rule-to-improve-information-about-access-to-credit-in-the-mortgage-market/>

³ See <http://www.consumerfinance.gov/hmda>

related insurance for manufactured housing personal property loans so consumers' payments more fully reflect all costs associated with those loans.

Thank you for your continued interest in the Bureau's work. Please do not hesitate to contact me should you have any additional questions, or have your staff contact Catherine Galicia or Tim Sheehan in the Bureau's Office of Legislative Affairs. Mrs. Galicia can be reached at 202-435-9711 and Mr. Sheehan can be reached at 202-435-7004. I look forward to working with you on this and other consumer financial protection matters of importance to you and your constituents.

Sincerely,



Richard Cordray
Director

*Please continue to share with us ideas
you see as interesting and important
so we can consider them—
Rcd*