



October 22, 2019

VIA ONLINE PORTAL

Frank Vance
Disclosure (FOIA) Office
Office of the Comptroller of the Currency
Washington, DC 20219

Re: Freedom of Information Act Request

Dear Mr. Vance:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of your agency, American Oversight makes the following request for records.

The Trump administration has eased supervision over leveraged loans.¹ As a result, this market has undergone an enormous expansion.² Although the precise size of the market has been difficult to ascertain, it is reported to be valued at trillions of dollars.³ Experts have expressed concerns about the risks associated with leveraged loans,⁴ including that banks are originating loans to increasingly indebted companies and foregoing crucial protections on their capital.⁵ As such, certain experts are afraid that these instruments are

¹ Kristen Haunss, *Regulatory Crackdown Unlikely in Leveraged Loan Market*, REUTERS (Mar. 15, 2019, 11:25 AM), <https://www.reuters.com/article/regulatory-crackdown-unlikely-in-us-leve/regulatory-crackdown-unlikely-in-us-leveraged-loan-market-idUSL1N2120Q6>.

² Damian Paletta, *How Regulators, Republicans, and Big Banks Fought for a Big Increase in Lucrative but Risky Corporate Loans*, WASH. POST (Apr. 6, 2019, 6:21 PM), https://www.washingtonpost.com/business/economy/how-regulators-republicans-and-big-banks-fought-for-a-big-increase-in-lucrative-but-risky-corporate-loans/2019/04/06/08c8cd58-4b1e-11e9-b79a-961983b7e0cd_story.html.

³ Mayra Rodriguez Valladares, *Corporate Debt Continues to Rise As Do Problem Leveraged Loans*, FORBES (Jul. 25, 2019, 2:38 PM), <https://www.forbes.com/sites/mayrarodriguezvalladares/2019/07/25/u-s-corporate-debt-continues-to-rise-as-do-problem-leveraged-loans/#88aba1e35966>.

⁴ Mayra Rodriguez Valladares, *Leveraged Loans and Collateralized Loan Obligations Are Riskier Than Many Want to Admit*, FORBES (Sep. 22, 2019, 12:00 PM), <https://www.forbes.com/sites/mayrarodriguezvalladares/2019/09/22/leveraged-loans-and-collateralized-loan-obligations-are-riskier-than-many-want-to-admit/#68360aa76602>.

⁵ *Id.*



especially vulnerable to default, and in the event of economic downturn, this market would exacerbate instability.⁶

American Oversight seeks records with the potential to shed light on whether and to what extent the regulation of leveraged loans is influenced by outside groups.

Requested Records

American Oversight requests that the Office of the Comptroller of the Currency (OCC) produce the following records within twenty business days:

All email communications (including email messages, email attachments, calendar invitations, and calendar invitation attachments) sent by any of the OCC officials specified below to any of the external individuals or entities specified below regarding regulation of leveraged loans.

OCC Officials

1. Joseph Otting, Comptroller of the Currency, including but not limited to the email address joseph.otting@occ.treas.gov, and anyone communicating on his behalf, such as an executive or special assistant, or scheduler
2. Morris Morgan, Senior Deputy Comptroller, including but not limited to the email address morris.morgan@occ.treas.gov
3. Jonathan Gould, Senior Deputy Comptroller, including but not limited to the email address jonathan.gould@occ.treas.gov
4. Grovetta Gardineer, Senior Deputy Comptroller, including but not limited to the email address grovetta.gardineer@occ.treas.gov
5. Maryann Kennedy, Senior Deputy Comptroller, including but not limited to the email address maryann.kennedy@occ.treas.gov
6. Michael Sullivan, Senior Deputy Comptroller, including but not limited to the email address michael.sullivan@occ.treas.gov
7. Ralph DeLeon, Director for Banking Relations, including but not limited to the email address ralph.deleon@occ.treas.gov
8. Carrie Moore, Director for Congressional Relations, including but not limited to the email address carrie.moore@occ.treas.gov

External Entities

Senate

1. Senator Ben Sasse, including but not limited to any email addresses ending in @sasse.senate.gov

⁶ Mayra Rodriguez Valladares, *Big Banks Are Very Exposed To Leveraged Lending And CLO Markets*, FORBES (Apr. 15, 2019, 6:00 AM), <https://www.forbes.com/sites/mayrarodriguezvalladares/2019/04/15/big-banks-are-very-exposed-to-leveraged-lending-and-clo-markets/#33716f2a7309>.

2. Senator Bill Cassidy, including but not limited to any email addresses ending in @cassidy.senate.gov
3. Senator David Perdue, including but not limited to any email addresses ending in @perdue.senate.gov
4. Senator John Kennedy, including but not limited to any email addresses ending in @kennedy.senate.gov
5. Senator Mike Crapo, including but not limited to any email addresses ending in @crapo.senate.gov
6. Senator Mitch McConnell, including but not limited to any email addresses ending in @mccconnell.senate.gov
7. Senator Patrick Toomey, including but not limited to any email addresses ending in @toomey.senate.gov
8. Senator Richard Shelby, including but not limited to any email addresses ending in @shelby.senate.gov
9. Senator Thom Tillis, including but not limited to any email addresses ending in @tillis.senate.gov
10. Senator Tim Scott, including but not limited to any email addresses ending in @scott.senate.gov
11. Senator Tom Cotton, including but not limited to any email addresses ending in @cotton.senate.gov

House of Representatives

1. Representative Ann Wagner, including but not limited to the email addresses ann.wagner@mail.house.gov, charlie.keller@mail.house.gov, and rachel.wagley@mail.house.gov
2. Representative Bill Huizenga, including but not limited to the email addresses bill.huizenga@mail.house.gov, jon.dewitte@mail.house.gov, and palmer.rafferty@mail.house.gov
3. Representative Blaine Luetkemeyer, including but not limited to the email addresses blaine.luetkemeyer@mail.house.gov, chad.ramey@mail.house.gov, and hailey.hart@mail.house.gov
4. Representative Bryan Steil, including but not limited to the email addresses bryan.steil@mail.house.gov, ryan.carney@mail.house.gov, and david.goldfarb@mail.house.gov
5. Representative French Hill, including but not limited to the email addresses french.hill@mail.house.gov, brooke.bennett@mail.house.gov, dylan.frost@mail.house.gov, and steven.smith@mail.house.gov
6. Representative Kevin McCarthy, including but not limited to the email addresses kevin.mccarthy@mail.house.gov, james.min@mail.house.gov, and kyle.lombardi@mail.house.gov
7. Representative Steve Stivers, including but not limited to the email addresses steve.stivers@mail.house.gov, courtney.whetstone@mail.house.gov, and mark.gilbride@mail.house.gov

Trade Associations

1. Clearing House Association, including but not limited to any email addresses ending in [@theclearinghouse.org](mailto:the clearinghouse.org)
2. Bank Policy Institute, including but not limited to any email addresses ending in [@bpi.com](mailto:bpi.com)
3. Loan Syndications and Trading Association, including but not limited to any email addresses ending in [@lsta.org](mailto:lsta.org)
4. American Bankers Association, including but not limited to any email addresses ending in [@aba.com](mailto:aba.com)
5. Securities Industry and Financial Markets Association, including but not limited to any email addresses ending in [@sifma.org](mailto:sifma.org)
6. Financial Services Forum, including but not limited to any email addresses ending in [@fsforum.com](mailto:fsforum.com)
7. American Investment Council, including but not limited to any email addresses ending in [@investmentcouncil.org](mailto:investmentcouncil.org)

Financial Institutions

1. Goldman Sachs, including but not limited to any email addresses ending in [@gs.com](mailto:gs.com)
2. J.P. Morgan, including but not limited to any email addresses ending in [@jpmorgan.com](mailto:jpmorgan.com)
3. Barclays, including but not limited to any email addresses ending in [@barclays.com](mailto:barclays.com)
4. Bank of America, including but not limited to any email addresses ending in [@bofa.com](mailto:bofa.com)
5. Credit Suisse, including but not limited to any email address ending in [@credit-suisse.com](mailto:credit-suisse.com)
6. Deutsche Bank, including but not limited to any email address ending in [@db.com](mailto:db.com)
7. Citigroup, including but not limited to any email address ending in [@citigroup.com](mailto:citigroup.com)
8. Wells Fargo, including but not limited to any email address ending in [@wellsfargo.com](mailto:wellsfargo.com)
9. American International Group, including but not limited to any email address ending in [@aig.com](mailto:aig.com)
10. MetLife, including but not limited to any email address ending in [@metlife.com](mailto:metlife.com)

American Oversight believes that records containing the terms below are likely to be responsive records, and American Oversight requests that the government, at a minimum, employ these search terms to identify responsive records:

1. “leveraged loan”
2. “leveraged lending”
3. “leveraged finance”
4. “junk loan”
5. “collateralized loan obligation”

6. "CLO"
7. "covenant-lite"
8. "document-lite"
9. "zombie companies"

In an effort to accommodate the government and reduce the number of responsive records to be processed and produced, American Oversight has limited its request to emails sent by the specified custodians. To be clear, however, American Oversight still requests that complete email chains be produced, displaying both the sent messages and the prior received messages in each email chain. This means, for example, that both a government official's response to an email from one of the external entities and the initial received message are responsive to this request and should be produced.

Please provide all responsive records from November 9, 2016 until the date of the search.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's regulations, American Oversight 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, the request is primarily and fundamentally for non-commercial purposes.

American Oversight requests a waiver of fees because disclosure of the requested information is "in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government."⁷ The public has a significant interest in regulation of leveraged loans, given the risks that this type of lending may pose to the U.S. economy. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including supervision of leveraged loans and whether outside financial interests are guiding federal policymaking on the topic. American Oversight is committed to transparency and makes the responses agencies provide to FOIA requests publicly available, and the public's understanding of the government's activities would be enhanced through American Oversight's analysis and publication of these records.

This request is primarily and fundamentally for non-commercial purposes.⁸ As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight's financial interest. American Oversight's mission is to promote transparency in government, to educate the public

⁷ 5 U.S.C. § 552(a)(4)(A)(iii).

⁸ See 5 U.S.C. § 552(a)(4)(A)(iii).

about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.⁹

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.¹⁰ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers;¹¹ posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;¹² posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;¹³ posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;¹⁴ and posting records and analysis regarding the Department of Justice's decision in response to demands from Congress to direct a U.S. Attorney to undertake a wide-ranging review and make recommendations regarding criminal investigations relating to the President's

⁹ American Oversight currently has approximately 12,200 page likes on Facebook and 54,400 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Sept. 6, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Sept. 6, 2019).

¹⁰ News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

¹¹ DOJ Records Relating to Solicitor General Noel Francisco's Recusal, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; Francisco & the Travel Ban: What We Learned from the DOJ Documents, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

¹² See generally *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>; see, e.g., *Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

¹³ Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business, AMERICAN OVERSIGHT, <https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business>.

¹⁴ Investigating the Trump Administration's Efforts to Sell Nuclear Technology to Saudi Arabia, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia>.

political opponents and allegations of misconduct by the Department of Justice itself and the Federal Bureau of Investigation.¹⁵

Accordingly, American Oversight qualifies for a fee waiver.

Guidance Regarding the Search & Processing of Requested Records

In connection with its request for records, American Oversight provides the following guidance regarding the scope of the records sought and the search and processing of records:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.¹⁶ It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.¹⁷
- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to government-wide requirements to manage agency information electronically,¹⁸ and many agencies

¹⁵ *Sessions' Letter Shows DOJ Acted on Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

¹⁶ *See Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); *cf. Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

¹⁷ *See Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

¹⁸ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive

have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency's archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

- 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. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

Conclusion

If you have any questions regarding how to construe this request for records or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to American Oversight, please do not hesitate to contact American Oversight to discuss this request. American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in an electronic format by email. Alternatively, please provide responsive material in native format or in PDF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, please contact Hart Wood at foia@americanoversight.org or 202-873-

Departments & Independent Agencies, "Managing Government Records Directive," M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

1743. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

A handwritten signature in blue ink, appearing to read "Austin R. Evers". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Austin R. Evers
Executive Director
American Oversight