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July 19, 2012

Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: “Disclosure of Consumer Complaint Data,” Docket No. CFPB-2012-0023

Dear Ms. Jackson:

These comments are submitted on behalf of the U.S. Chamber of Commerce Center for Capital Markets Competitiveness (“CCMC”). The U.S. Chamber of Commerce (the “Chamber”) is the world’s largest business federation, representing the interests of more than three million companies of every size, sector, and region. The Chamber created the CCMC to promote a modern and effective regulatory structure that will enable capital markets to function effectively in the 21st century.

CCMC appreciates the opportunity to submit comments in connection with the Bureau’s notice of proposed policy statement entitled “Disclosure of Consumer Complaint Data” (Docket No. CFPB-2012-0023).

Given the very serious flaws in the Bureau’s policy statement regarding disclosure of credit card complaint data,¹ CCMC strongly opposes the Bureau’s proposal to apply that same policy to consumer complaints regarding all other consumer financial products and services within the Bureau’s jurisdiction.

First, given the widely varied nature of the large number of products and services that fall under the Bureau’s jurisdiction, it simply is not possible for the Bureau to determine in advance the problems that will be created by applying the approach set forth in the policy statement in all contexts. More importantly, potentially affected businesses and other interested members of the public cannot comment intelligently on

¹ See “Disclosure of Certain Credit Card Complaint Data,” 77 Fed. Reg. 37558 (2012).

all of the issues that would be presented by the extension of the policy to any or all of the myriad products and services that the Bureau might identify in the future. Instead of providing a meaningful opportunity for comment, the Bureau's proposed approach therefore amounts to an entirely illusory opportunity for input—allowing the Bureau to claim that it has solicited the views of the public while doing so in a way that prevents any meaningful public participation.

If the Bureau is actually interested in obtaining the views of interested parties, instead of merely appearing to do so, it should employ an approach that would allow for meaningful comment: identify the particular product or service to which it may wish to apply the disclosure policy; issue a request for comment; and make a decision regarding whether and how to apply the policy in that different context based upon the comments received. That approach will enable the Bureau to make an informed decision, provide a real opportunity for input, and involve little if any delay given the use of a 30-day comment period.

Second, this course of action is especially warranted because of the significant defects in the Bureau's policy. It is remarkable that an agency whose mission is to prevent consumer deception would release data that it acknowledges to be misleading, stating that the "marketplace of ideas" will provide sufficient corrective information. Any business that took that approach would instantly be subject to government enforcement action for engaging in a deceptive practice. It is nothing short of remarkable that the Bureau is unwilling to subject itself to the same standard that applies to the businesses it regulates.

1. The Bureau Should Provide A Meaningful Opportunity To Comment By Seeking The Public's Views On A Product-By-Product Basis.

The Dodd-Frank Act gives the Bureau jurisdiction over an extremely broad segment of the American economy. The statutory definition of the term "financial product or service"—the linchpin of the Bureau's authority over "consumer financial products and services"—includes ten separate categories of activities (and an additional catch-all category) as diverse as extending credit; providing real estate settlement services; selling, providing, or issuing stored value cards; providing financial data processing services; and financial advisory services.²

² 12 U.S.C. § 1002(15).

Providers of these very different products and services interact with consumers in different ways. It simply makes no sense to assume, as the Bureau proposes, that a model developed in the credit card context, where interactions with consumers are fairly well standardized based on the particular practices of that sector, can apply in vastly different contexts in which business-consumer interactions differ dramatically both among various products and services and even within similar products and services.

For example, the Bureau responded to complaints about public disclosure of unverified complaints in the credit card context by stating that “[i]ssuer names are verified using credit card numbers and other procedures”³ and asserting that the “verifiable account number” was a key protection against manipulation of the database by third parties.⁴ Account numbers that verify the business involved do not exist in most other sectors; rather, the account number is conferred by the particular company and does not by itself provide any verifiable data regarding the particular company that may be involved. Consumers simply will make the unverifiable assertion that they were customers of a particular business.⁵

Moreover, the nature and size of the businesses that provide these other types of services differ significantly. Some real estate settlement services are provided by numerous small businesses throughout the country; the same is true of financial advisory services. The ability of small businesses to respond to Bureau inquiries in a short time frame and to protect themselves against misuse of a public complaint process is much less than the ability of large companies to do so. Yet much of the Bureau’s defense of its credit card complaint disclosure policy rests on the resources and existing complaint-resolution practices of credit card issuers.⁶ This is another reason why the credit card policy cannot be used as a template for other contexts.

³ 77 Fed. Reg. at 37561.

⁴ 77 Fed. Reg. at 37562; *see also id.* at 37564 .

⁵ The Bureau could require consumers to provide other evidence demonstrating the existence of a business relationship with the company named in the complaint. But such evidence can be manufactured and, in addition, that approach would impose a significant burden on the Bureau,. There is a very significant question whether allocating taxpayer resources to working with each complainant to obtain sufficient evidence corroborating the identity of the business involved (rather than maintaining a private database and awaiting the business’s response to and resolution of the complaint) would represent appropriate stewardship of those taxpayer funds.

⁶ *E.g.*, 77 Fed. Reg. at 37566-67.

Finally, and most importantly, although the Bureau's jurisdiction is quite comprehensive with respect to credit card issuers, it has numerous exceptions that apply with respect to other consumer financial products and services. Merchants and retailers, real estate brokers, accountants and tax preparers, lawyers, entities regulated by state insurance regulators, employee benefit plans, entities regulated by other federal agencies, insurance businesses, auto dealers, and charitable activities are all excluded from the Bureau's authority either totally, or in some circumstances—with the circumstances often defined in complex and detailed terms.⁷

Surely the Bureau must determine that the entity named in a consumer complaint is subject to its jurisdiction for the activity involved before inserting the complaint in a public database and directing the company to respond? Otherwise the Bureau would be imposing significant burdens on entities over which it has no authority. But that determination would be extremely difficult, and require both the company named and the Bureau to expend significant resources in order to resolve the issue.

These complexities demonstrate that far from providing an appropriate model for other consumer financial products and services, the credit card policy is uniquely *unsuited* for that role because the Bureau's justifications for the policy rest to a large degree on characteristics of the credit card sector that are not replicated in the vast majority of consumer financial products and services within the Bureau's jurisdiction.

Indeed, it is noteworthy that the other public complaint databases maintained by federal agencies that the Bureau cited in support of its credit card decision—the NHTSA and FDA databases, for example⁸—involve sectors that have relatively few participants whose identity is verifiable and that, for each sector, interact with consumers in an essentially identical manner. And the agency that has chosen *not* to make its complaint database public, the Federal Trade Commission, oversees a broad range of businesses of different sizes, in different businesses, that interact with consumers in different ways—in other words a business environment that resembles many of the other products and services over which the Bureau has jurisdiction. Those examples confirm that the Bureau would be entirely unjustified in applying its credit card policy to any other context without first seeking public comment specifically relating to that other consumer

⁷ 12 U.S.C. §§ 5517, 5519.

⁸ 77 Fed. Reg. 37562 & 37564.

financial product or service in order to ensure that the Bureau has informed itself about the costs and benefits of such a decision.

There is an easy way for the Bureau to do just that: issuing a request for comment on a proposed product or service-specific disclosure policy. The Bureau's attempt to short-circuit that process is wholly unjustified because the determinations underlying the credit card policy simply cannot be transferred in whole to other products and services.

Certainly the notion that seems to underlie the Bureau's proposal—that every provider of any consumer financial product or service should file comments now to inform the Bureau of the particular reasons why the credit card policy should not apply in its particular context—is not only an unreasonable financial burden on thousands if not hundreds of thousands of businesses as to which the Bureau may not even be contemplating public release of complaints, but also requires businesses to anticipate how the Bureau might adapt its credit card policy to the very different factual context of other consumer financial products and services. It makes no sense to impose costs on businesses throughout the economy simply to enable the Bureau to short-cut the public comment process.

The Bureau should abandon its proposed approach, which is calculated to give the appearance of public input while making it impossible for the public to provide meaningful comment, and instead issue proposed policy statements when (and if) it tentatively determines that public disclosure of consumer complaints may be appropriate for a particular consumer financial product or service.

2. Expansion Of The Bureau's Flawed Policy Is Unjustified And Unwarranted.

The Bureau's request for comments makes clear that it will not entertain comments regarding the credit card policy, but only seeks "comments that are specific to the proposed extension of the policy for one or more new product areas."⁹ But the substantive flaws of the credit card policy provides another critical reason why that policy's extension on an across-the-board basis or to particular products or services—without product or service-specific opportunity to comment—would be arbitrary and capricious.

⁹ 77 Fed. Reg. at 37617.

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A key element of the Bureau's core authority is to prevent "deceptive . . . acts or practices."¹⁰ Yet the Bureau itself recognized that "some consumers may draw (or be led to) erroneous conclusions from the" credit card database information.¹¹ The Bureau suggests that this risk of deception is sufficiently addressed by the inclusion of a "warning notice" on the database and the fact that the Bureau issues other information regarding credit card providers.

Neither the Bureau, nor any other regulator, would allow a business to justify the issuance of potentially misleading or deceptive information on this basis. The business's arguments that the impact of the misleading disclosure was ameliorated by a warning notice or by other disclosures made by the company would be met with skepticism and an enforcement action. Yet the Bureau has decided that it need not abide by the rules it applies to the businesses it regulates. That is an unconscionable and unjustifiable approach to the execution of the Bureau's public responsibilities. Businesses in other sectors of the economy subject to regulation by the Bureau should not be victimized by this approach.

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Thank you for your consideration of these comments. We would be happy to discuss these issues further with the Bureau's staff.

Sincerely,



David Hirschmann

¹⁰ 12 U.S.C. § 5531(a).

¹¹ 77 Fed. Reg. at 37562.