



CENTER FOR CAPITAL MARKETS
C O M P E T I T I V E N E S S

DAVID T. HIRSCHMANN
PRESIDENT AND CHIEF EXECUTIVE OFFICER

1615 H STREET, NW
WASHINGTON, DC 20062-2000
(202) 463-5609 | (202) 463-3129 FAX

May 16, 2014

Ms. Claire Stapleton
Chief Privacy Officer
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Privacy Act of 1974, as Amended—Notice of a Revised Privacy Act System of Records, 79 Fed. Reg. 21440 (Apr. 16, 2014)

Dear Ms. Stapleton:

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 CCMC to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy.

CCMC appreciates the opportunity to submit this letter in connection with the Privacy Act System of Records Notice CFPB.005—Consumer Response System (“the SORN”). We welcome the changes made in the SORN and urge the CFPB to take full advantage of the opportunity they present to: (1) reevaluate the need for and benefits of its public release of unverified complaint data through the Consumer Response System Database (“CRS Database”); and (2) ensure appropriate auditing and evaluation of the Consumer Response System going forward, including by the CFPB’s Inspector General.

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We previously have explained our concerns about the Consumer Response System and, in particular, the publication of unverified complaints through the CRS Database.¹

¹ See, e.g., Letter from David Hirschmann to Monica Jackson re. “Disclosure of Consumer Complaint Data,” Docket No. CFPB-2012-0023 (July 19, 2012), available at <http://www.centerforcapitalmarkets.com/wp-content/uploads/2010/04/2012-7-19-CFPB-Complaint-Disclosure-Comments-changes-FINAL.pdf>; Letter From

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We have explained, for example, why the publication of unverified complaints will mislead consumers and permit manipulation of the database. Likewise, we have explained that the one-size-fits-all complaint resolution process adopted by the CFPB disproportionately burdens small businesses and improperly forces companies outside the CFPB's jurisdiction to alter high-performing customer service practices. Similarly, we have pressed for a justification of the expense of the CRS Database—both to companies and to taxpayers—and we have explained why the CFPB should follow the Federal Trade Commission's example and refrain from publishing consumer complaint data. Unfortunately, the track record of the CRS Database to date only has confirmed these views.

Given our concerns about the CRS Database, we have taken some encouragement from the CFPB's repeated promises to evaluate the Consumer Response System on a continuing basis.² To date, however, we have seen no evidence of serious evaluation of the CRS Database, including whether it has achieved its stated goals, whether its benefits have exceeded its costs, or whether various safeguards against confusion and abuse have worked as the CFPB assumed. We accordingly believe that the time is ripe to reevaluate the Consumer Response System. The SORN presents two opportunities to do exactly that:

- First, the SORN amends the purpose of the Consumer Response System to clarify that “the information will also be used for administrative purposes, to ensure quality control, performance, and improving management

David Hirschmann and Lisa A. Rickard to Claire Stapleton (Feb. 9, 2011), *available at* <http://www.centerforcapitalmarkets.com/wp-content/uploads/2010/04/CFPB-letter-Privacy-Act.pdf>.

² *See, e.g.*, CFPB, Final Policy Statement, Disclosure of Consumer Complaint Data, No. CFPB-2012-0023, 78 Fed. Reg. 21218, 21223 (Apr. 10, 2013) (“2013 Final Policy Statement”) (“[T]he Bureau plans to study the effectiveness of its policy on an ongoing basis, and plans to continue to engage with the public, including regulated entities, as it assess the efficacy of its complaint disclosure policy and retains the ability to make adjustments as needed when addressing the concerns of particular financial markets.”); *id.* at 21220 (“As stated in the final Policy Statement, the Bureau plans to study the effectiveness of its policy on an ongoing basis, and plans to continue to engage with the public, including regulated entities, as it assesses the efficacy of its complaint disclosure policy.” “Consumer Response has and will continue to refine its Complaint System over time.”); CFPB, Notice of Final Policy Statement, Disclosure of Certain Credit Card Complaint Data, No. CFPB-2011-0040, 77 Fed. Reg. 37558, 37560 (June 22, 2012) (“2012 Notice”) (“[T]he Bureau plans to study the effectiveness of its policy on an ongoing basis, and plans to continue to engage with the public, including regulated entities, as it assesses the efficacy of its complaint disclosure policy.”); *id.* at 37559 (“Consumer Response . . . will continue to refine and improve its Complaint System over time.”); CFPB, Notice of Proposed Policy Statement with Request for Comment, Disclosure of Certain Credit Card Complaint Data, No. CFPB-2011-0040, 76 Fed. Reg. 76628, 76630 (Dec. 8, 2011) (“Once the CFPB finalizes this Policy Statement, we will study its effectiveness on an ongoing basis.”); *id.* at 76633 (“Going forward, the CFPB intends to study the effectiveness of its credit card complaint disclosure policy in realizing its stated purposes.”).

processes.”³ This clarification provides notice that the CFPB may use the data in the Consumer Response System to evaluate whether the System is achieving its stated goals and whether amendment or reconsideration of that system is appropriate.

- Second, the SORN amends the list of routine uses of the Consumer Response System to include disclosures to “[a]ppropriate agencies, entities, and persons for the purpose of performing audit or oversight operations authorized by law, but only such information as is necessary and relevant to such audit or oversight function.”⁴ This addition makes clear that the Privacy Act creates no obstacle to allowing the CFPB’s Inspector General (who technically is shared with the Federal Reserve) access to the Consumer Response System. This is particularly important because the CFPB’s Inspector General has undertaken an audit, due to be completed in the Fourth Quarter of 2014, to “look at the CFPB’s process for creating the Consumer Complaint Database and . . . assess the accuracy and completeness of the consumer complaint data available to the general public.”⁵

To be clear, the SORN does not expand the pre-existing authority of the CFPB and its Inspector General to evaluate and oversee the design and implementation of the Consumer Response System. But the SORN does make clear that the Privacy Act is not an impediment to effective evaluation, management, and oversight of that system, including the CRS Database.⁶ In performing these review functions, the CFPB and its Inspector General should revisit issues raised in the creation of the CRS Database and determine whether the system has performed as intended when it was designed and launched. For example, we recommend addressing the following five questions:

³ SORN, 79 Fed. Reg. at 21440.

⁴ *Id.* at 21442.

⁵ Office of Inspector General, Work Plan 13 (May 5, 2014), *available at* http://www.federalreserve.gov/oig/files/OIG_Work_Plan.pdf.

⁶ The Privacy Act also would pose no impediment to sharing sufficient data with the Government Accountability Office to allow that entity to study and evaluate the Consumer Response System. *See* 5 U.S.C. § 552a(b)(10) (provision of the Privacy Act allowing disclosure “to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the Government Accountability Office”).

1. Has a “marketplace of ideas” made up for deficiencies in the data collected in the CRS Database?

For three basic reasons, the consumer complaints submitted to the CRS Database present unreliable and misleading data points that are unsuitable for public release. First, each complaint is unverified. The CFPB has adopted a rudimentary method of attempting to match an account number to a credit card issuer, but that approach does not work for product sets that do not have distinguishing account numbers. It thus remains unclear how many complainants actually are customers of the companies at issue. Second, the complaint data is not randomly selected and thus is unrepresentative. It also has not been normalized to reflect the relative share each company holds in the relevant market. Third, the data lacks context, failing, for example, to provide any sense whether each complaint reflects anything more than a consumer’s decision to address a typical inquiry to the CFPB rather than to the company’s customer service department.⁷

The CFPB previously has acknowledged these deficiencies in the data that populates the CRS Database and that “some consumers may be drawn (or led to) erroneous conclusions.”⁸ Nonetheless, the CFPB has put its faith in a purported “marketplace of ideas” to make up for these deficiencies. It has done so despite the obvious fact that the CFPB would not allow a financial services institution to issue misleading information to consumers on the assumption that an asserted marketplace of ideas would cure any resulting confusion.

We think it is necessary and appropriate to evaluate any reliance on a “marketplace of ideas” to justify allowing misleading information to appear in the CRS Database. Specifically, we believe that the following three issues should be evaluated: (1) whether a “marketplace of ideas” in fact has developed that has processed the published consumer complaint data, and if so what comprises this “marketplace” and what it has shown; (2) whether consumers who have consulted the complaint data have been informed by any such “marketplace of ideas;” and (3) whether any such “marketplace of ideas” has undone any harms caused by the publication of misleading information.

⁷ As we have explained previously, the process through which the CFPB built the CRS Database, and particularly its approach to expanding complaint publication beyond credit cards, was substantially flawed and failed to provide a real opportunity for stakeholders to comment on the changes planned by the CFPB.

⁸ 2012 Notice, 77 Fed. Reg. at 37561-37562.

2. Even assuming information deficiencies can be and have been cured, does the limited value of an individual complaint argue for ending the publication of individual complaints or the identification of companies subject to individual complaints?

In a recent speech, Director Richard Cordray analogized an individual complaint to a pixel, from which little information can be drawn, and an aggregation of such complaints to a high-definition picture that can be fully understood and analyzed.⁹ Although we would disagree about the clarity that can be achieved by assembling many unreliable data points, we understand Director Cordray to recognize the basic point that an individual complaint is unlikely to inform a consumer. We believe that this insight demands evaluation of the continued publication of those complaints (or, more narrowly, the inclusion of company names), even if the information deficiencies discussed above somehow can be cured. We urge the CFPB to take up this question. Such evaluation should include an assessment whether consumers are viewing individual complaints online in a manner that is likely to result in a misleading impression of the companies who are listed in the complaints (as opposed to whatever balanced, aggregated view of a market that the CFPB believes properly may be drawn from the database).¹⁰

3. Do the observed benefits of the CRS Database justify its cost and the burdens it imposes on financial services companies?

The CFPB has offered a number of justifications for publishing unverified complaint data (as opposed to keeping the database internally and publishing aggregated reports), including: first, that consumers and third parties who get access to the data will generate insights not produced by the CFPB's analysis;¹¹ second, that publication will "sharpen competition over product quality and customer service;"¹² and third, that

⁹ CFPB, Prepared Remarks of CFPB Director Richard Cordray at the Federal Reserve Bank of Chicago (May 9, 2014), available at <http://www.consumerfinance.gov/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-the-federal-reserve-bank-of-chicago-2/>.

¹⁰ The Consumer Database website prominently features individual complaints, making it highly likely that visitors to the site will scroll through various complaints and get a misleading sense of the companies who have the misfortune to be included in the first few complaints. See CFPB, Consumer Complaint Database, available at <http://www.consumerfinance.gov/complaintdatabase/> (selecting "All" under "Data by Product" heading will generate list of individual complaints). We are unaware of any data indicating that consumers who visit the Consumer Database are predominantly using research tools available on that site (or downloading data for research purposes) in a manner that would suggest that they generally see a representative (and not misleading) picture of the market for a selected financial product or service.

¹¹ 2012 Notice, 77 Fed. Reg. at 37567.

¹² *Id.* at 37564.

publication will “help ensure that the Bureau remains accountable for addressing the complaints that it receives.”¹³

We believe it necessary and timely to evaluate whether the assumed benefits of publishing unverified complaints from the CRS Database have been realized. Any observed benefits should then be compared to the expense associated with publishing data from the CRS Database, as well as the burdens it imposes on financial services companies, including through the publication of misleading information.

4. Should the Consumer Response System be changed in light of the high percentage of complaints closed with explanation?

Upon the suggestion of various stakeholders, the CFPB included “Closed with explanation” as one of the possible resolutions of a customer’s complaint.¹⁴ Unsurprisingly, a large majority of all complaints have been closed on this basis: 68% of complaints in 2013 and 65% of complaints in 2012.¹⁵ This fact raises at least two significant questions: first, whether the distinction between inquiries and complaints that the CFPB pledged to uphold actually has stood up in practice;¹⁶ and second, more generally, whether the closing of so many “complaints” with explanation demands a fundamental reconsideration both of the manner in which the data is presented (i.e. whether those entries should be removed) and of the notion that this database generally can be used to discern problems at financial services institutions. We believe that the high number of items closed with explanation confirms that the CFPB is unnecessarily transforming well functioning customer service relationships into a hostile “complaints” process with a regulator interposed between a company and its customer. The possible ramifications of such a change—both for companies and consumers—deserve close scrutiny.

¹³ 2013 Final Policy Statement, 78 Fed. Reg. at 21223.

¹⁴ 2012 Notice, 77 Fed. Reg. at 37565.

¹⁵ See CFPB, Consumer Response Annual Report: January 1 – December 31, 2013, at 33 (Mar. 2014), *available at* http://files.consumerfinance.gov/f/201403_cfpb_consumer-response-annual-report-complaints.pdf; CFPB, Consumer Response Annual Report: January 1 – December 31, 2012, at 25 (Mar. 2013), *available at* http://files.consumerfinance.gov/f/201303_cfpb_Consumer-Response-Annual-Report-to-Congress.pdf.

¹⁶ See 2012 Notice, 77 Fed. Reg. at 37561.

5. Are anti-manipulation tools working and is the CFPB removing erroneous complaints from the CRS Database?

In response to concerns that the data within the Consumer Response System could be manipulated, such as by a potential litigant seeking to inflate apparent complaints against a company, the CFPB announced that it would use a number of tools to counter any manipulation.¹⁷ Likewise, upon hearing concerns that erroneous complaints would be included in the CRS Database, the CFPB explained that it had put mechanisms in place to remove complaints that are identified as erroneous.¹⁸ We believe that the success of these tools and mechanisms should be audited to determine whether the integrity of the CRS Database has been maintained against manipulation and error.

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The performance of the CRS Database to date has confirmed our concerns about the publication of unverified consumer complaint data and the unfair burdens that it places on companies. As the CFPB's own data now shows, the vast majority of these "complaints" have been resolved with an explanation by the company, thus calling into question whether the CFPB's system in fact is displacing—and disrupting—existing and effective customer service channels. We accordingly believe it appropriate to reevaluate the design of the Consumer Response System and the premises that justified the publication of unverified complaint data. The SORN issued by the CFPB makes clear that the Privacy Act poses no impediment to such a reevaluation. We urge the CFPB and its Inspector General to address these important issues.

Sincerely,



David Hirschmann

¹⁷ *Id.* at 37562.

¹⁸ *Id.* at 375767; 2013 Final Policy Statement, 78 Fed. Reg. at 21222.