



CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

1615 H STREET, NW
WASHINGTON, DC 20062-2000

May 26, 2015

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

**Re: Request for Information Regarding the Consumer Complaint Database,
Docket No. CFPB-2015-0013.**

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 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 comment on the request for information (the “RFI”) by the Consumer Financial Protection Bureau (the “Bureau”) regarding ways that the Bureau might supplement its policy of publishing consumer complaint narratives.¹ The Bureau framed the RFI as an inquiry into “two potential avenues for sharing positive consumer feedback about companies.”² First, the Bureau asked whether it should summarize the contents of the complaint database in a manner that permits ranking of financial services companies along various metrics.³ Second, the Bureau asked whether it should establish a new process and separate database to publish customer “compliments” about financial services companies. The Bureau should pursue neither idea. These contemplated changes would do nothing to cure—and in fact would compound—the misleading effect of the Bureau’s consumer complaint database.

¹ See RFI, CFPB-2015-0013, 80 Fed. Reg. 15583 (Mar. 24, 2015).

² *Id.* at 15584.

³ *Id.*

(1) The Bureau Should Not Distort the Marketplace by Purporting to Identify the Companies that Best Serve Their Customers.

The Bureau has acknowledged that “some consumers may draw (or be led to) erroneous conclusions” from the complaint database.⁴ It also has recognized that complaints may be based on “factually incorrect information as a result of, for example, a complainant’s misunderstanding or misrecollection of what happened.”⁵ Likewise recognizing these problems, we have joined many other stakeholders in repeatedly urging the Bureau to stop publishing misleading information that distorts the marketplace and is unfair to individual financial services companies.⁶ The Bureau has not heeded those requests. Instead, the Bureau has continued to expand the database, most recently deciding to publish consumer complaint narratives that will present a skewed and unfair image of individual financial services companies. The Bureau has justified this step in part by promising that a “marketplace of ideas” would emerge that would help consumers draw accurate conclusions from this misleading data.⁷

The Bureau now changes course in two key respects.

First, rather than continuing to extol the power of each single complaint, the Bureau acknowledges that publication of each individual complaint will have very little value. The details of each individual complaint—including the narrative portion—always have been available to the Bureau, of course. The policy question has been what incremental value is provided by publishing them through the database. Very little, the Bureau now concedes:

[I]t is not the existence of a routine complaint, by itself, that draws the attention of the market, but instead it is factors such as the number of

⁴ Disclosure of Certain Credit Card Data, No. CFPB-2011-0040, 77 Fed. Reg. 37558, 37562 (June 22, 2012).

⁵ *See, e.g.*, Disclosure of Consumer Complaint Narrative Data, No. CFPB-2014-0015, 79 Fed. Reg. 42765, 42767 (July 23, 2014).

⁶ *See, e.g.*, Letter from David Hirschmann to Monica Jackson, Re. Proposal to Disclose Consumer Complaint Narrative Data, Docket Number CFPB-2014-0016 (Sept. 22, 2014), *available at* <http://www.centerforcapitalmarkets.com/wp-content/uploads/2014/09/2014-9.22-Comment-regarding-complaint-narratives.pdf>.

⁷ *See, e.g.*, Final Policy Statement, Disclosure of Consumer Complaint Narrative Data, 80 Fed. Reg. 15572, 15581 (Mar. 24, 2015) (“In deciding to release the structured complaint data, the Bureau considered this concern [regarding unjustified reputational harm from misleading complaints] and concluded that, while there is always a risk that market participants will draw erroneous conclusions from available data, the marketplace of ideas would on the whole be able to determine what data show and their relative importance. The Bureau believes this to be equally true with respect to narratives, and that consumer narrative publication will in fact make it easier for the marketplace to evaluate the rest of the complaint data by providing more information and context.”).

complaints relative to comparable companies, how a company handles its complaints, the patterns and categories that identify and show the frequency of certain complaints, and perhaps the occasional notable fact pattern.⁸

The limited value of individual complaint narratives perhaps would not matter so much if the promised “marketplace of ideas” had emerged and provided insights into truths masked by the misleading data and buried among un-“notable” fact patterns. No such marketplace has emerged, however. Despite suggesting—without citation—that some “market participants, news organizations, and consumer groups can and have created normalized results” based on the contents of the database,⁹ the Bureau does not provide any reason to believe that any such marketplace will emerge in the near future.

Rather than admitting error on this point or waiting in hopes that the promised “marketplace of ideas” emerges in the future, the Bureau changes course in a second respect: it proposes to accomplish its ultimate goal directly by providing the conclusions that the promised “marketplace of ideas” was expected to provide. The Bureau thus indicates that it is considering creating “top-ten lists” and other metrics to identify the companies that it believes provide the worst (and the least-worst¹⁰) customer service and satisfaction.¹¹ The Bureau also suggests that it may perform “automated textual analysis” to determine consumer “sentiments.” By this, it apparently means that it would report on the companies that most frequently left consumers feeling “frustrated,” “deceived,” or otherwise unhappy about the service they received.

The Bureau thus declares for the first time that the database must be analyzed in the aggregate and that the Bureau is the right analyst for the job. In nominating itself for this role, however, the Bureau does not acknowledge the substantial and inappropriate power it would give itself to shape consumer decisions.

Any effort to rank or otherwise assess companies based on the complaint database will require the analyst to make various judgment calls about how to normalize the data, how to define markets and market segments, and what data to throw out. The analysis,

⁸ RFI, 80 Fed. Reg. at 15584.

⁹ *See id.* at 15579.

¹⁰ Despite any analysis drawing from the *complaint* database, the Bureau purports to pursue this notion in an effort to highlight *positive* stories about financial services companies. We do not agree with the Bureau’s assumption that consumers readily will draw positive impressions about companies from any statistical summaries.

¹¹ *See* RFI, 80 Fed. Reg. at 15584.

for example, would have to exclude the “complaints” that in fact do not reflect any misconduct by the financial services company. This at least would mean excluding the majority of complaints that are closed “with explanation” (i.e. those that are not complaints at all, but only reflect consumer misunderstanding), complaints that are the subject of a dispute that is resolved in favor of the company, as well as complaints that are misleading. Any analysis likewise would have to normalize the underlying data so that a company is not penalized for having a large market share that inevitably causes a higher number of complaints. This normalization analysis would require a variety of assumptions, both with respect to how to define and measure the relevant market or market segment, and how to measure each company’s share of that market or market segment. Any top-ten (or bottom-ten) list or other summary thus necessarily will reflect the presumptions and biases of its creator. So too will choices about which metrics to display.

The Bureau has not pointed to any experience or authority that qualifies it for this role. Nor has the Bureau identified—and we are unaware of—any federal agency that has thought it prudent to take on a similar role. The Consumer Product Safety Commission does not identify the top-ten companies for safe products for babies. The National Highway Traffic Safety Administration does not identify the car companies with the least and most complaints. These other regulators instead presumably have recognized that identifying companies with most-favored and least-favored status creates tension with the obligation to enforce the laws fairly and even-handedly.¹² The Bureau likewise should not give official government sanction to statistical analyses that steer customers to certain financial services companies and away from others. And it certainly should not do so on the basis of information that the Bureau itself has acknowledged may mislead consumers. In short, the Bureau should not be in the business of picking winners and losers in the consumer financial services market.¹³

The Bureau appears to have decided that consumers need to be told what conclusions to draw from the complaint database. This is the wrong response to the inadequacies of the complaint database and the failure of any marketplace of ideas to

¹² The utility of such summaries is another question. The Bureau repeatedly (and correctly) has noted that consumers do not choose their financial services companies with regard to many products. Payment processors, debt collectors, and credit reporting agencies, for example, all provide important consumer financial services without being chosen by consumers. What purpose would publishing a top-ten (or bottom-ten) list of such companies serve?

¹³ The prudential regulators long have recognized that they should prevent the various scores or ratings they provide from distorting the marketplace. For example, the CAMELS ratings are strictly confidential. *See* Inter-Agency Guidance, Confidentiality of the Supervisory Rating and Other Nonpublic Supervisory Information (Feb. 28, 2005).

emerge to compensate for them. Rather than building a new mechanism for endorsing conclusions based on misleading data, the Bureau should address the existing infirmities in the database. We recognize, of course, that the Bureau is unlikely now to reverse its prior steps regarding the complaint database. We strongly urge the Bureau, however, to monitor and rework its existing complaint database policy as necessary rather than plunging into a new endeavor that will distort the marketplace for consumer financial products and services. At a very minimum, should the Bureau decide to pursue this misguided policy, it should not do so under the pretense that it would somehow benefit financial services companies.

(2) The Bureau Should Not Create a Separate Database of Customer “Compliments.”

Like many other stakeholders, we previously have expressed our concern that publishing complaint narratives will give a slanted impression of customers’ experiences with financial services companies. Countless American consumers rely on financial services companies every day without incident. And even when customers have questions or concerns, the vast majority of issues are resolved well before turning into anything resembling a complaint, let alone one that requires the intervention of the Bureau. By publishing “complaints”—and particularly their narrative portions—the Bureau’s complaint database provides a skewed impression of financial services companies.¹⁴

The Bureau suggests that it could address this imbalance by publishing consumer “compliments.”¹⁵ This is no solution. In fact, by creating only a semblance of even-handedness, such a process would only make the problem worse.

First, the suggested approach fails on its own terms. It will not facilitate a balanced view of the consumer financial service marketplace because it is designed to separate the “compliments” from the “complaints.” A consumer reviewing the complaint database would not do so with the benefit of any contemporaneous insight into positive consumer experiences with the company.

¹⁴ This is particularly true given that the bulk of the “complaints” are “closed with explanation” and thus are more accurately described as questions requiring an explanation by the company, not complaints.

¹⁵ See RFI, 80 Fed. Reg. at 15584-85.

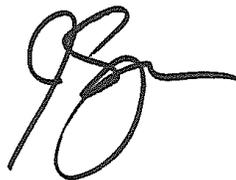
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Second, the Bureau is unlikely to elicit any meaningful number of public “compliments” regarding positive experiences with particular financial services companies. Some financial services companies are unlikely to receive any consumer compliments, no matter how creditable their actions. Consider debt-collection agencies, for example. Even an agency that meets all legal requirements and industry best practices is unlikely to secure consumer praise. Indeed, what consumer is likely to take the time to submit a compliment about his or her experience with such an agency, or with any financial services company for that matter? While the Bureau offers an incentive (complaint resolution) to an individual who submits a complaint, there would be no incentive for a consumer to submit a compliment. Instead, any submission of compliments likely would be so minimal as to prevent any meaningful insight.¹⁶

The Bureau should abandon any thought of creating a database of consumer “compliments.” The Bureau’s resources would be far better spent providing companies regulatory relief or legal transparency than by creating a fig leaf that gives the impression of even-handedness without actually compensating for the misleading nature of the consumer complaint database.

We thank you for your consideration of these comments and would be happy to discuss these issues further with appropriate staff.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jess Sharp', with a stylized flourish extending to the right.

Jess Sharp
Managing Director

¹⁶ Moreover, the small number of compliments would render the database particularly susceptible to manipulation.