



CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

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September 30, 2016

Consumer Financial Protection Bureau
Attention: PRA Office
1700 G Street NW
Washington, DC 20552

Re: Agency Information Collection Activities: Comment Request, CFPB-2016-0041, 81 Fed. Reg. 50,484 (Aug. 1, 2016), OMB Control Number 3170-00NEW.

To whom it may concern:

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 Center for Capital Markets Competitiveness (“CCMC”) to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy. Strong and appropriate consumer protections are an important and necessary component of efficient capital markets.

CCMC appreciates the opportunity to comment on the Paperwork Reduction Act notice of the Consumer Financial Protection Bureau (the “Bureau”) to collect and ultimately publish consumer narratives concerning how a company has handled a customer dispute in its complaint database (the “Proposal”).¹ We are disappointed that the Bureau has not acted upon our proposals to improve the consumer complaint database as a tool to facilitate communication between companies and customers.² The Bureau has also declined to create policies and procedures to normalize or even

¹ See Agency Information Collection Activities: Comment Request, CFPB-2016-0041, 81 Fed. Reg. 50484 (Aug. 1, 2016) (hereinafter *August 2016 Comment Request*).

² See Letter from D. Hirschmann, Pres. & CEO, CCMC, to M. Jackson (Sept. 22, 2014) (on file with CFPB in docket no. CFPB-2014-0016) (regarding proposal to disclose consumer complaint narrative data).

verify complaint data before publishing.³ As a result, the information in the database may not be useful, may be misleading, and thus may create distortions in the marketplace. We believe the Bureau's present proposal would exacerbate the current problems with the database and create further distortions in the public domain.

We consequently write to emphasize three points of concern with the Proposal:

- Publishing the proposed data fields will mislead consumers and distort the marketplace.
- Publishing the proposed data fields will cause unjustified reputational harm to financial services companies that work diligently to address customers' questions and concerns.
- The Bureau should address the widely-recognized problems in the database before adding yet more misleading information.

We continue to believe that the complaint database is failing American consumers and the businesses that serve them. As we repeatedly have explained, the Bureau can and should do better. At a minimum, we urge the Bureau not to compound the problems within the database by adding yet more misleading information. Instead, we respectfully request that the Proposal be withdrawn and that the Bureau move forward on the commonsense reforms including:

- Adopt effective mechanisms to prevent manipulation of the database;
- Stop publishing manifestly erroneous complaints, such as those in which consumers misidentify the party from whom they seek relief, and complaints that are closed with a simple explanation;

³ See Letter from J. Sharp, Managing Dir., Ctr. for Capital Markets Competitiveness, U.S. Chamber of Comm. (CCMC), to M. Jackson, Office of Exec. Sec'y, Consumer Fin. Prot. Bureau (Aug. 31, 2015) (hereinafter *Sharp Letter*) (on file with CFPB in docket no. CFPB-2015-0030) (regarding proposal to normalize consumer complaint data).

- Encourage all consumers to contact the relevant financial services company before submitting complaints to the Bureau; and
- Normalize the consumer complaint data so it is useful and not misleading.

These steps will make the consumer database a more effective tool for consumers and businesses alike.

DISCUSSION

The Bureau presently collects consumer complaints, forwards them to companies for a response, and, with consumer consent and following a scrub that purports to remove personally identifiable information, publishes the complaint narrative and company response in the complaint database.⁴ Consumers then may indicate whether they continue to have a dispute with the company after its response.⁵ In the Proposal, the Bureau proposes three changes to this process: giving consumers the option to publish a narrative reply to the company's response; publishing a consumer's "rating" of the company's response on a five-point scale; and removing the option to indicate a dispute with the company's response.⁶

While the Bureau couches the Proposal as one to facilitate the public dissemination of "positive company behavior," the technical effect of the Proposal would be the publication of all post-complaint narrative feedback. The Bureau gives little justification for these substantial changes:

The Bureau anticipates publication of consumer feedback to highlight positive company behavior, provide consumers with timely and understandable information about consumer financial products and services, and improve the functioning, transparency, and efficiency of markets for

⁴ CONSUMER FIN. PROT. BUREAU, CONSUMER RESPONSE ANNUAL REPORT 13 (Mar. 2016) (hereinafter *2015 Complaint Report*).

⁵ *Id.* at 13, 43.

⁶ August 2016 Comment Request, *supra* note 1, at 50484.

such products and services...Negative feedback about the company's handling of the consumer's complaint would be better supported and more useful to companies than the current "dispute" function.⁷

The Proposal contains no data to support the assertion that consumers, who presently cannot reasonably rely on the database because it is neither verified nor normalized, will have access to more "understandable information" about companies' products and services. Neither does the Bureau cite any data or study to support its contention that narrative data will be "more useful to companies" than the present system. In short, the Bureau has no reasonable basis upon which to predict that the Proposal will improve consumer welfare or further the Bureau's consumer protection mission. It is questionable whether the Bureau could meet that burden by proposing to add further stress and complexity to an already broken system without first taking steps to fix current flaws.

(1) Publishing the Proposed Data Fields Will Further Mislead Consumers and Add More Distortion to the Marketplace.

The Bureau has acknowledged that the complaint database is misleading. The Bureau concedes that submitted complaints are likely to reflect mistakes or misunderstandings by consumers,⁸ and, more worryingly, may be subject to intentional manipulation.⁹ In fact, the Bureau's reports on the database consistently have confirmed that more than two-thirds of the submissions are not really complaints at all, but are matters that can be closed with an explanation from the company.¹⁰ Moreover, the Bureau never has adopted any meaningful process for verifying the contents of individual complaints, but rather has chosen merely to

⁷ *Id.* at 50484-85.

⁸ For example, the Bureau has acknowledged that complaints may be based on "factually incorrect information as a result of, for example, a complainant's misunderstanding or misrecollection of what happened." *See* Disclosure of Consumer Complaint Narrative Data, No. CFPB-2014-0015, 79 Fed. Reg. 42765, 42767 (July 23, 2014) (hereinafter *2014 Proposal*).

⁹ *See, e.g.*, Disclosure of Certain Credit Card Complaint Data, 77 Fed. Reg. 37558, 37562 (June 22, 2012) (hereinafter *2012 Policy Statement*) (stating that the Bureau uses limited measures, such as consumer affirmations, to mitigate manipulation).

¹⁰ *See, e.g.*, 2015 Complaint Report, *supra* note 4, at 43 (indicating that approximately 72% of complaints are closed with a simple explanation).

confirm that some commercial relationship exists between the financial services company and the complainant.¹¹ Neither has the Bureau ever attempted to normalize the data in the complaint database despite its acknowledgement that presently the data is not meaningful or contextualized.¹² The Bureau has rightly acknowledged—and probably understated—that “some consumers may be drawn (or led to) erroneous conclusions” from the database.¹³

The Bureau’s repeated response to these known problems has been that a “marketplace of ideas” somehow will emerge to correct any consumer misimpressions. But there has never been any evidence that such a “marketplace of ideas” has, in fact, emerged or that any force at all has corrected for the problems in the database. This, of course, is unsurprising—there is no reasonable basis to expect that fundamentally unreliable data, controlled by a government agency, somehow could support an accurate understanding of the marketplace.

Although the Bureau claims to want to be careful in its construction of the database,¹⁴ the numerous problems in the database have not dissuaded the Bureau from its apparent goal of making the database a central feature of the financial services landscape. Now, the Bureau once again proposes to expand the database in a way that ignores existing problems and creates new ones. The Proposal evidences the Bureau’s apparent preference for a database that generates sound bites, not insight.

The Bureau “anticipates” that these proposed changes will “improve the functioning, transparency, and efficiency of markets.”¹⁵ But it provides no basis for this claim. Instead, the history of the database to date indicates that publication of the proposed fields will increase the ways in which the database misleads consumers and companies alike.

¹¹ See, e.g., *id.* at 37567.

¹² See, e.g., Request for Information Regarding the Consumer Complaint Database: Data Normalization, 80 Fed. Reg. 37238 (June 30, 2015) (hereinafter *2015 RFI*) (soliciting “feedback on ways to make raw complaint data more meaningful by supplementing that data with a context more useful for consumers and other market participants.”).

¹³ 2012 Policy Statement, *supra* note 9, at at 37562.

¹⁴ Prepared Remarks of CFPB Director Richard Cordray at the Consumer Response Field Hearing (July 16, 2014) (hereinafter *Cordray Remarks*) (“One conscious choice we made – perhaps wisely, as it now seems in retrospect – was to build this tool very carefully, adding different products and markets at distinct stages.”).

¹⁵ August 2016 Comment Request, *supra* note 1, at 50484.

- *Narrative Replies to Company Responses.* As the Bureau already knows, the narratives it publishes are unverified and often factually incorrect—a standard the Bureau would not tolerate from an entity it regulates.¹⁶ Moreover, they are unrepresentative: they are sure to come from consumers with the most “notable”¹⁷ stories to tell. Narrative replies to company responses will suffer from these very problems as well. Publishing them will only worsen the misleading character of the database.
- *Consumer Ratings of Company Responses.* Like published narratives, five point rating systems are much too subjective and inaccurate to provide insight. How is a consumer to distinguish between the lowest- and second-lowest ratings? The experience of five-star ratings in the private sector confirms that they are highly unlikely to be useful in this context. And the stakes are particularly high here: it is very likely that consumers incorrectly will interpret any aggregated ratings of companies’ replies to complaints in the database as a proxy for the companies’ customer service or product offerings more broadly. What insight could a database user gain by observing that a company earned five-star ratings for responding to complaints when according to the Bureau about 2/3 of submissions are not even complaints?
- *The Dispute Function.* In 2015, at least 65% of consumers chose not to dispute a company’s response.¹⁸ Given the lack of any meaningful justification for the Proposal to eliminate the dispute function and replace it with a quantitative and qualitative feedback survey, we wonder what problem the Bureau is trying to solve with the Proposal. Does the Bureau believe that a 65% satisfaction rate does not accurately reflect consumer sentiment? If so, it is impossible for the public to comment on the wisdom of the Proposal without seeing the Bureau’s research on

¹⁶ See, e.g., 2014 Proposal, *supra* note 8, at 42767 (“If consumers were to rely without question on all narrative data, it is possible that subsequent purchasing decisions may be based on misinformation.”).

¹⁷ 2015 RFI, *supra* note 12, at 15584.

¹⁸ See 2015 Complaint Report, *supra* note 4, at 47.

that topic. (It is questionable whether any such research could be produced given the Bureau's own admission that the database is unreliable and not scientific.)

In short, the Bureau's theory that the proposed changes will improve market transparency is unpersuasive. So too is the Bureau's suggestion that the proposed changes somehow will lead to an influx of positive comments into the *complaint* database. If the Bureau insists on proceeding down this path, it will only compound the misleading nature of the database, thereby giving a "megaphone" to yet more unverified, inaccurate, and unfair narratives that will confuse, not enlighten, consumers.¹⁹

(2) Publishing the Proposed Data Fields Will Cause Further Unjustified Reputational Harm to Financial Services Companies That Work Diligently to Address Customers' Questions and Concerns.

The Bureau's Proposal will not only cloud the marketplace with more disinformation but it may cause unwarranted reputational harm to companies that invest heavily in high-quality, responsive customer-service programs.

The Bureau knows that there is an "inherent risk" that financial institutions will incur reputational harm due to the publication of complaint narratives and non-normalized data.²⁰ But it has published narratives nonetheless. And the Bureau long has known that "[c]ompany-level information should be considered in context of company size and/or market share"²¹ in order to be properly understood. Nevertheless, the Bureau ignores its own admonition when it regularly blasts out reports to the press labeling America's largest financial institutions as the "Top 10 Most-Complained-About Companies" without any shred of effort to supply accompanying "context."

¹⁹ See Cordray Remarks, *supra* note 14 ("We . . . can offer people a megaphone to empower them to tell their own stories in their own words.").

²⁰ *Id.* ("[T]here is a risk that financial institutions could incur intangible reputational damage as a result of the dissemination of complaint narratives. To a large extent, this risk is inherent in any release of complaint data.").

²¹ CONSUMER FIN. PROT. BUREAU, MONTHLY COMPLAINT REPORT V.13 15 (July 2016).

The Proposal would serve to give the government’s apparent imprimatur to consumer replies to company responses. That will only magnify the undeserved reputational harm that the complaint database already inflicts on companies. As the Bureau is well aware, many consumers submit complaints “as a result of...a complainant’s misunderstanding or misrecollection of what happened.”²² When a company accurately—and fairly—informs those consumers that they are not entitled to relief, there is a substantial risk that such consumers will use the Bureau’s “megaphone” to publish inflammatory and unfounded comments on the company’s justified response to the complaint.²³ Unjustified remarks and accompanying low ratings are likely to reverberate through the marketplace, creating the false impression that the company does not prioritize the interests of its customers.

This misinformation would be particularly unfortunate given companies’ heavy investments in ensuring that customers are satisfied by the way their concerns and complaints are handled. Businesses monitor customer satisfaction closely, making a point of assessing customer satisfaction with post-contact surveys and measuring customer satisfaction with a host of different statistical measures. The Bureau should focus on encouraging and supporting such constructive and innovative engagement between companies and consumers, not create competing metrics that are likely to be as disruptive for companies as they are uninformative for consumers.

(3) The Bureau Should Address the Widely-Recognized Problems in the Database Before Adding Yet More Misleading Information into the Database.

The Bureau suggests that it wants to add the proposed data in order to highlight positive consumer interactions. It is true that the database currently provides an unduly negative perspective on individual companies and the marketplace, but adding *more* unverified data to the database is not the solution. Consumers who choose to file complaints with the Bureau are not a representative sample of

²² 2014 Proposal, *supra* note 8, at 42767 (“There is a . . . major risk associated with publishing narratives which arises from the fact that the narratives may contain factually incorrect information as a result of, for example, a complainant’s misunderstanding or misrecollection of what happened.”).

²³ *See id.*

customers. Given that most complaints grow from customer misunderstandings, it is highly unlikely that customers will invest the time necessary to highlight “positive” experiences with companies’ responses to complaint submissions—a reality that cannot be corrected by the Bureau because it lacks data normalization procedures.

The Bureau should abandon the Proposal. Instead, as we repeatedly have urged in the past,²⁴ the Bureau should take the following steps:

- Adopt effective mechanisms to prevent manipulation of the database. Simple verification of a commercial relationship is inadequate, for example, to prevent a potential litigant from inflating the volume of complaints against a financial services provider.
- Cease publishing manifestly erroneous complaints, such as those in which consumers misidentify the party from whom they seek relief. There is no justifiable reason, for example, to publish a complaint against a credit reporting agency if it is clearly based on the alleged misconduct of a furnisher.
- Cease publishing complaints that are closed with a simple explanation. These are not “complaints” at all. They in reality reflect confusion about the underlying financial product or misunderstandings of the purpose of the “complaint” process. Adding these submissions to the database inflates the number of complaints, unduly disparages the reputation of financial service providers, and misleads consumers.
- Encourage all consumers to contact the relevant financial services company before submitting complaints to the Bureau. A substantial portion of complaints in the database were submitted before consumers raised the issue with their financial services provider. Encouraging consumers to contact companies first will limit erroneous complaints

²⁴ See, e.g., Sharp Letter, *supra* note 3.

and ensure that the Bureau is not displacing existing customer service functions at taxpayer expense.

- Normalize the data. The Bureau should ensure that consumers are directed towards a representative sample of data, and it can ensure that any reports or summaries that it issues use normalized data. (Of course, the Bureau should also stop publishing its misleading and unfairly disparaging lists of “Top 10 Most-Complained-About Companies.”)

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The Bureau should support efforts to ensure that consumer complaints are quickly and effectively resolved. Accordingly, the Bureau should not disrupt existing customer service relationships and distort the marketplace by publishing further unverified and inaccurate information that will mislead consumers and unfairly harm responsible financial services companies. We consequently urge the Bureau to abandon its current proposal and to focus its attention on curing the clear and longstanding flaws in the 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 "T. J. Norton", with a long horizontal flourish extending to the right.

Travis J. Norton