



CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

TOM QUAADMAN
EXECUTIVE VICE PRESIDENT

1615 H STREET, NW
WASHINGTON, DC 20062-2000
(202) 463-5540
tquaadman@uschamber.com

June 4, 2018

Ms. Darian Dorsey
Deputy Assistant Director
Office of Consumer Response
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

**Re: Request for Information Regarding Bureau Public Reporting Practices
of Consumer Complaint Information, Docket No. CFPB-2018-0006**

Dear Deputy Assistant Director Dorsey:

The U.S. Chamber of Commerce (the Chamber) is the world's largest business federation, representing the interests of more than three million business organizations 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. We appreciate the opportunity to respond to the Bureau of Consumer Financial Protection's (the Bureau) Request for Information (RFI) regarding public reporting practices of consumer complaint information.

The CCMC has repeatedly written to and met with the Bureau in the past raising concerns related to consumer complaint information. While we support strong consumer protections, the publication of unverified data has the potential to create confusion and misimpressions amongst consumers. Specifically, we believe the Bureau should reform its approach to reporting consumer complaints in the following two key ways:

- Stop publishing the consumer complaints database while working to prevent it from misleading consumers; and

- Only publish reports that improve consumer or stakeholder understanding of market trends, or where required by statute.¹

We also submit for the record our previous correspondences with the Bureau on problems with the consumer complaint database, attached to this letter as an appendix.

Background

Congress included as one of the Bureau's six core functions "collecting, investigating, and responding to consumer complaints."² To accomplish this goal, Congress tasked the Bureau's Director with "establish[ing] a unit whose functions shall include establishing a single, toll-free telephone number, a website, and a database or utilizing an existing database to facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or services," as well as with routing complaints to other agencies of jurisdiction where appropriate.³ Congress directed the Bureau to use this complaint data to inform the performance of its supervisory function,⁴ as well as its market monitoring and related rulemaking and other actions.⁵ Moreover, Congress required the Bureau to present it with an annual report on the complaints received over the past year.⁶

The Bureau thus has an important statutory mandate to receive and process customer complaints and to use those complaints to inform its operations. Critically, nothing in this mandate requires the *publication* of complaint data or reports naming individual companies. Nonetheless, rather than focus on its clear statutory mandate, the Bureau decided to publish the contents of the complaint database, including narratives submitted by consumers. While publishing complaints and narratives may seem innocuous, there are two main issues that lead to distorted complaint data:

1. **Not verified:** The issue being alleged in the complaint is not verified, and the only piece of information verified is that the consumer has a commercial relationship with the financial institution. Even if the company and consumer have a commercial relationship, it does not mean that facts

¹ 12 U.S.C. § 5493.

² 12 U.S.C. § 5511(c)(2).

³ 12 U.S.C. § 5493(b)(3). *See also* 12 U.S.C. § 5534 (describing response process).

⁴ *See* 12 U.S.C. § 5514(a)(1)(C) (authorizing the Bureau to undertake supervisory examinations based, in part, on complaint data).

⁵ 12 U.S.C. § 5512(c)(4)(B)(i).

⁶ 12 U.S.C. § 5493(b)(3)(C).

expressed in the complaint are correct; nor does it mean that the company was at fault for the action alleged in the complaint.

2. **Not normalized:** The Bureau has admitted the need for normalization and released a request for information asking how best to normalize the data.⁷ Normalization means comparing apples to apples with regards to financial institutions. Since large global banks have more customers than smaller regional banks, the larger ones will undoubtedly have more complaints. Normalizing data will be a challenge which reinforces the need to not publish misleading data.

By continuing to publish the data despite these main issues, the Bureau failed to take seriously the numerous problems with doing so – many of which the Bureau had previously acknowledged. Thus:

- As the Bureau has put it, complaints may be based on “factually incorrect information as a result of, for example, a complainant’s misunderstanding or misrecollection of what happened.”⁸
- The Bureau’s definition of “complaint” is simply any “expression of dissatisfaction,” which can obviously take countless forms and be justified or not justified.
- Approximately 75% of the “complaints” in the database are closed with an explanation, not relief, from the company.⁹ In other words, the company followed the proper processes in the bulk of these submissions and no financial relief was due to the consumer¹⁰ We will discuss more in depth in the “consumer inquiry” request for information due July 16th.
- The complaint database is subject to manipulation, such as by a potential litigant seeking to inflate apparent complaints against a prospective defendant.

⁷ Bureau, Request for Information Regarding the Consumer Complaint Database: Data Normalization https://files.consumerfinance.gov/f/201505_cfpb_request-for-information-regarding-the-consumer-complaint-database-data-normalization.pdf

⁸ See Disclosure of Consumer Complaint Narrative Data, 79 Fed. Reg. 42,765, 42,767 (July 23, 2014).

⁹ See, e.g., CFPB, Consumer Response Annual Report: January 1-December 31, 2017, at 44 (April 2018) (reporting an average of 75% of complaints being closed with explanation across product categories).

¹⁰ For example, the Bureau has reported that various consumers have not realized that they generally must dispute a charge on a credit card statement within 60 days or that a credit card issuer may not override a merchant’s “no-return policy.” See CFPB, Consumer Response: A Snapshot of Complaints Received 20 (July 2014).

- The descriptions and groupings of products and services presented to consumers through the Bureau’s complaint portal is subjective and can result in consumers inadvertently registering a complaint under the wrong category, product or service, leading to misrepresentation in the Bureau’s public reporting of consumer complaints.
- Collecting consumers’ sensitive financial information and publishing portions of this information puts consumers’ privacy at risk.

Despite knowledge of these problems, the Bureau’s past leadership continued to publish and aggressively publicize the complaint database, providing what it has described as a government “megaphone.”¹¹ But this “megaphone” spreads information that misleads consumers and thereby impaired the efficiency and transparency of markets for consumer financial products and services.

The Bureau further compounded its mistake of publishing misleading complaint data by publishing lists of the top ten “most-complained-about-companies” in its periodic reports—even without normalizing the data. Such lists were inherently flawed as they inevitably named the companies that have the greatest number of interactions with consumers: i.e. the credit reporting agencies and the largest banks. Publishing reports that suggested that these companies did something wrong because they had the largest amount of customer complaints without putting those numbers in context was simply unfair. After much push back, the Bureau agreed to stop naming companies and ceased producing that portion of the reports.

The Bureau’s prior leadership attempted to justify its publication of this misleading information with the claim that a “marketplace of ideas” would determine what the complaint data showed.¹² But a “marketplace of ideas,” cannot correct for flaws in the underlying data—particularly where that information has already received a government stamp of approval by publication by the Bureau. Instead, the publication and marketing of the database has misled consumers, disrupted existing customer care relationships, imposed undue reputational harm on responsible companies, and created privacy risks for consumers who submit complaints. For these reasons, now is the time for the Bureau to revisit and recalibrate its approach to publishing data from the consumer complaint database and related reports.

¹¹ See Prepared Remarks of CFPB Director Richard Cordray at the Consumer Response Field Hearing (July 16, 2014).

¹² See Disclosure of Certain Credit Card Data, 77 Fed. Reg. 37,558, 37,561 (June 22, 2012).

Discussion

We are pleased that the Bureau has chosen to distinguish between how it collects, responds to, and otherwise processes complaints and customer inquiries, which is exhibited in the two different comment requests. We are also pleased that the Bureau is requesting feedback on the publishing of complaints because Congress mandated that the Bureau collect, respond to, and otherwise process customer complaints, but did not mandate their publication. Moreover, they raise substantially different policy issues, particularly to the extent that the Bureau's receipt of unverified complaint data has substantially lesser consequences than its publication because of the misleading narrative that might be created. As requested by the Bureau, we focus here on the publication of the contents of the complaint database and reports derived from it.

The Bureau's RFI repeatedly emphasizes two key principles that will guide its approach to publishing the consumer complaint database and related reports going forward. First, it focuses on what Congress said that it can or must do with respect to publishing complaint information. Second, it focuses on what steps it should take to have a net benefit on the efficiency and transparency of the market for consumer financial products and services. We think that these are the correct questions to ask when evaluating this topic. As to the first, it merits emphasis that Congress wanted the Bureau to collect and process complaints, and to use them to inform its supervisory, monitoring, and other functions. Congress made no mention with regards to publishing the database. Thus, the Bureau has *no* statutory obligation to publish the contents of the complaint database or reports that name individual companies. Instead, the Bureau's only statutory obligation is to collect the information and then provide summary reports to Congress. And, as to the second principle, the record to date has highlighted the enormous perils—for responsible businesses and their consumers—associated with publishing unverified complaint data and then compounding those problems by publishing reports that build on that data. While we do not rule out the possibility of publishing helpful information based on the database, we strongly urge the Bureau to take this opportunity to reset its approach to publishing the contents of the complaint database and related reports. In particular, we urge the Bureau to stop publication of the contents of the database at least until it can satisfy itself that the information published does not put consumers' data at risk and does not mislead consumers.

(1) Stop Publishing The Consumer Complaints Database While Working To Prevent It From Misleading Consumers.

As discussed above, the Bureau has acknowledged that publication of the complaint database is likely to mislead consumers. We believe that this fact alone should be enough to make the Bureau stop publishing the database in its current form. Businesses subject to the Bureau's authority work very hard to avoid inadvertently publishing misleading information for fear of facing an enforcement action for deception. Here, in contrast, the Bureau knowingly is publishing misleading information, backed only by vague and unsupported claims that a still unidentified "marketplace of ideas" somehow will correct the mistaken conclusions that observers draw from the database. Instead of publishing unverified information, the Bureau should hold itself to the highest standards of accuracy with respect to the information that it disseminates into the marketplace. The Bureau must be confident that the database is not harming consumers, instead of relying on an uncertain "marketplace" theory. To live up to the high standards and responsibility of a federal government agency, we think the Bureau should immediately stop publishing the consumer complaint database in its current form while the Bureau works through how to benefit, and not mislead, consumers. As discussed below, the reasons not to publish this data are numerous, while the countervailing arguments are based on speculation, not actual evidence.

Complaint information is unverified. The consumer complaint database contains numerous complaints that include patently incorrect statements. We are not asserting that consumers are trying to make incorrect statements, but rather, the complexity of transactions and multiple parties included can lead to confusion. For example, various complaints identify the wrong company or unnecessarily name an innocent third party (e.g. the merchant at which a payment card was used). Moreover, numerous complaints involve companies that were simply acting in accordance with the law and a consumer who was unhappy with a perfectly appropriate outcome. Some examples of this are a consumer who thinks the bank provided too much paperwork when getting a mortgage, which is mandated by the government; a consumers who is not able to obtain a loan, because the consumer is not credit worthy and the institution must still adhere to its examiners and safety and soundness requirements; or a consumer not being able to make a loan payment, but the bank cannot forgive the loan due to safety and soundness reasons. While these are frustrating outcomes, they are not the result of wrongdoing on behalf of the financial institution.

In its current form, the database will always publish unreliable and misleading data points for two basic reasons. First, each complaint is unverified. The Bureau tries to assess whether a commercial relationship exists between the consumer and the financial institution, but that does not mean the financial institution created the harm alleged in the complaint.¹³ Second, a complaint is inherently one-sided. It suffers from any flaws in a consumer's recollection and can be colored by the personal perspective that the consumer brings to the experience. This one-sided information does not necessarily speak to whether a company actually engaged in misconduct in a particular transaction. But the inevitable result nonetheless is that publishing this information is harmful as it causes consumers to make worse—not better—decisions in selecting consumer financial products or services.

Complaint information is not normalized. The Bureau presents complaint data in a format that does not account for the relative size of financial services companies. As a result, any consumer scrolling through the complaint database will likely be left with the misleading impression that larger companies—which commonly receive more complaints because they have more customers—are somehow less worthy of their business. Since this is raw complaint data, it is practically impossible for consumers to make a meaningful comparison.

Publishing complaint information puts consumer privacy at risk. The Bureau is well aware of the problems with adequately scrubbing data to ensure sensitive data is completely protected, and the various techniques that can be used to re-identify supposedly anonymous information. While the Bureau has scrubbing procedures in place, these techniques are not fail-safe and sensitive consumer information can be released inadvertently. Further, the harm of re-identification is significant as consumers face the disclosure of intimate details of their financial experiences. While the Bureau has adopted a scrubbing methodology, the Bureau has acknowledged that these steps “minimize (but not eliminate) the risk of re-identification.”¹⁴ Publishing the database in its current form consequently exposes countless consumers to privacy risks that the Bureau is not adequately disclosing.¹⁵

¹³ Harm is not always alleged. As mentioned above, about 75% are closed with explanation so many “complaints” are actually inquiries, but there is no method for submitting inquiries so it goes through the complaint database. Through a review of the “complaints”, it is clear that many are inquiries with questions about bank operations, consumers who lost their account numbers, etc.

¹⁴ 79 Fed. Reg. at 42,768 (“[T]he Bureau will take reasonable steps to remove personal information from the complaint to minimize (but not eliminate) the risk of re-identification.”).

¹⁵ At a minimum, the Bureau should provide consumers with clear notice of the potential privacy risks associated with submitting a complaint. We suggest the Bureau look to the model disclosure form under Regulation P. The Bureau particularly should be guided by that form’s clear statement of applicable privacy concerns and its provision of this information on a separate page that is clearly comprehensible by the consumer. Here, as elsewhere, we urge the Bureau not to hold itself to a lower standard than applies to the companies it regulates.

We ask the Bureau to confirm that each recommendation made in the Government Accountability Office's 2014 report has been implemented.¹⁶ We also urge the Bureau's Inspector General and GAO to conduct an updated assessment of the Bureau's privacy procedures before the complaint data – or any new data – is made public.

Further, the publication of unverified and unrepresentative consumer complaints raises questions about the Bureau's compliance with its obligations under the Data Quality Act.¹⁷ The Data Quality Act requires the Bureau to issue guidelines that maximize "the quality, objectivity, utility, and integrity of information" it disseminates. The Bureau's continued publication of consumer complaints knowing of the persistent inaccuracies is inconsistent with Bureau's obligation to create guidelines that prevent the dissemination of misinformation.

There are no meaningful, demonstrated benefits to publication. The prior leadership of the Bureau offered vague and unsupported theories as to how the publication of complaint data might have a net benefit. These justifications generally were based on a theory that somehow a "marketplace of ideas" would correct for the errors in the data. But this would pretend to achieve an impossible form of alchemy that would turn bad data into accurate conclusions. Moreover, even if it were theoretically possible, there is no evidence that such a marketplace of ideas actually has emerged, and people are in fact using the database as a shopping tool. As a result, there simply have been no demonstrated benefits to publication of all of the fields that the Bureau has chosen to make public. In fact, this is entirely consistent with the Bureau's own original predictions. In 2011, for example, it acknowledged that "[d]isclosure of narrative fields . . . would be unlikely to facilitate statistical analyses of trends or patterns."¹⁸

By refraining from publishing the data, the Bureau would be taking no radical step. Indeed, the Bureau would be acting entirely consistently with its statutory mandate. Moreover, it only would bring its approach in line with that of other agencies such as the Federal Trade Commission, Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, and the majority of agencies that do not publish their complaint databases, and others like the Federal Communications Commission that only publish limited complaint information.

¹⁶ Government Accountability Office, "Consumer Financial Protection Bureau: Some Privacy and Security Procedures for Data Collections Should Continue Being Enhanced" (Sept. 2014).

<https://www.gao.gov/assets/670/666000.pdf>

¹⁷ Pub. L. No. 106-554 § 515, 114 Stat. 2763 (Dec. 21, 2010).

¹⁸ See Disclosure of Certain Credit Card Complaint Data, 76 Fed. Reg. 76,628, 76,632 (Dec. 8, 2011).

To be clear, we do not call on the Bureau to stop collecting complaints or using the database for its own important internal purposes. The Bureau must fulfill its statutory mandate to collect and respond to complaints, as well as to use the complaint database to monitor for potential issues in markets for consumer financial products or services. Whether or not the Bureau publishes the complaint database has no bearing on its ability to accomplish that mission.

(2) Only Publish Reports That Improve Consumer Or Stakeholder Understanding Of Market Trends.

The Bureau is required to provide annual reports on consumer complaints to Congress.¹⁹ The past leadership went beyond this requirement, however, by choosing to publish additional reports based on the complaint data. These reports were inherently limited by the flaws in the complaint data upon which they were based. Nonetheless, the Bureau decided to publish top-ten lists of “most-complained-about-companies.” Because the Bureau failed to add context, these lists merely reflected that the financial services companies with the most interactions with consumers were named in the most complaints submitted to the Bureau. In short, the Bureau chose an approach that did not convey meaningful data, confusing consumers and potentially causing them to make worse choices in the market for consumer financial products or services based on limited and misleading information.

We were pleased to see that the Bureau’s more recent reports refrained from publishing “top-ten” lists for company complaints.²⁰ We encourage the Bureau to maintain this new and improved approach. But the Bureau should not stop there. It should refocus its approach to publishing reports based on the complaint database so that the reports advance the Bureau’s larger goals. To achieve this goal, we would urge the Bureau to focus on two guiding principles.

- First, the Bureau should ensure that reports based on the database educate consumers. Accuracy will be critical to achieving this goal. For example, if the Bureau decides to publish any information about the volume of complaints relating to named companies, it should be sure to properly give context to the data, remove inquiries from the count, detract the amount of complaints sent to other agencies, and eliminate inaccurate complaints. Alternatively, the Bureau should generate reports that inform consumers without using such measures; for example, by

¹⁹ 12 U.S.C. § 5493(b)(3).

²⁰ See, e.g., Monthly Complaint Report Vol. 25 (Aug. 2017).

describing a new scam being perpetrated against a certain category of consumer by fraudsters.

- Second, the Bureau should ensure that reports based on the database inform businesses of the Bureau's priorities to the extent possible. While the Bureau certainly should not attempt to use such reports to issue new legal interpretations, these reports can provide additional data points in a company's early warning system for compliance issues. For example, if the Bureau were to include descriptive information about a spike in consumer complaints regarding a certain category of issue, relevant companies could recalibrate or revisit their compliance monitoring systems to understand if their consumers could face similar problems. In this way, an effective report could allow the Bureau to highlight issues for companies and allow them to address those issues well before they turn into major problems that would merit consideration for enforcement action.

With regard to the publication of complaint data, we do not call upon the Bureau to limit itself to generating only those reports that are statutorily required. Indeed, we have been heartened even by the apparent change in approach to reports based on the database witnessed over the last nine months and think reports can be used as a financial education tool. However, we stress that any report must be based on solid, meaningful data. We trust that over time the Bureau will ensure, not only that its reports do no harm, but that they affirmatively help inform consumers and businesses, and thereby bring greater efficiency and transparency to markets for consumer financial products or services.

* * * * *

We thank you for the opportunity to submit these comments and would be happy to discuss these issues further.

Sincerely,

A handwritten signature in black ink, appearing to read 'TK' followed by a long horizontal flourish.

Thomas Quaadman