



September 22, 2014

VIA ELECTRONIC DELIVERY TO REGULATIONS.GOV

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

Re: *Comments of ACA International on the Notice of Proposed Policy Statement on the Disclosure of Consumer Complaint Narrative Data (Docket Number CFPB-2014-0016)*

Dear Ms. Jackson:

ACA International ("ACA") files this comment on behalf of its nearly 3,700 member organizations and their more than 230,000 employees worldwide in response to the Notice of Proposed Policy Statement on the Disclosure of Consumer Complaint Narrative Data ("Notice" or "Proposed Policy") issued by the Bureau of Consumer Final Protection ("Bureau" or "CFPB").¹ The Notice proposes to expand the Bureau's public-facing Consumer Complaint Database ("Database") to include "unstructured consumer complaint narrative data."

While ACA understands the Bureau's good intentions in trying to develop a Database that serves as a valuable tool for consumers and the marketplace, ACA continues to strongly object to the unfair and misleading nature of a government-run Database that publishes consumer complaints against named companies without any verification of accuracy or wrongdoing. Consequently, ACA vehemently opposes the Bureau's Proposed Policy to add even more potentially misleading and unfair information to the Database through unverified, anecdotal complaint narratives.

¹ 79 Fed. Reg. 42765 (July 23, 2014)("Proposal").

Besides the inherent privacy issues associated with publishing consumer narratives,² adoption of the Proposal will serve only to further exacerbate the flaws inherent in the Database's current composition: consumers will undoubtedly, and in many cases erroneously, look at individual narratives as reliable and/or representative of a company's practices, companies providing financial services will be subjected to tremendous risk of unfair reputational harm, and the Bureau will stray further from its promise to be data-driven by operating a Database that will amount to not much more than an unreliable, government-sponsored gripe site.

I. Background on ACA International

ACA International is the trade association for credit and collection professionals. Founded in 1939, and with offices in Washington, D.C. and Minneapolis, Minnesota, ACA represents nearly 3,700 members, including credit grantors, collection agencies, attorneys, asset buyers, and vendor affiliates.

ACA company members range in size from small businesses with a few employees to large, publicly held corporations. These members include the very smallest of businesses that operate within a limited geographic range of a single town, city, or state, and the very largest of national corporations doing business in every state. The majority of ACA company members, however, are small businesses, collecting rightfully owned debts on behalf of other small and local businesses. Approximately 75% of the association's company members maintain fewer than twenty-five employees.

As part of the process of attempting to recover outstanding payments, ACA members are an extension of every community's businesses. ACA members work with these businesses, large and small, to obtain payment for the goods and services already received by consumers. In years past, the combined effort of ACA members has resulted in the annual recovery of billions of dollars – dollars that are returned to, and reinvested by, businesses, and dollars that would otherwise constitute losses on the financial statements of businesses. Without an effective collection process, the economic viability of these businesses and, by extension, the American economy in general, is threatened. Recovering rightfully-owed consumer debt enables organizations to survive, helps prevent job losses, keeps credit, goods, and services available, and reduces the need for tax increases to cover governmental budget shortfalls.

² There are significant privacy risks of publishing consumer financial services complaint narratives on a public website. Even the Bureau admits that “[a] principal risk of publishing narratives is the potential harm associated with the possible re-identification of actual consumers within the Consumer Complaint Database.” Proposal at 42767. In addition to the significant harms that could occur through the inadvertent disclosure of personally identifiable information, privacy concerns could also cause consumers to omit helpful information that would facilitate a quick resolution of their complaint. Similarly, because of legal obligations to protect customers' privacy, companies will also be limited in providing full and fair responses to complainants. As a result, including narratives will unnecessarily create privacy risks that will inevitably chill the dialogue between companies and customers that is essential to resolution. This of course completely undermines the very function of the Database.

In 2013, Ernst & Young conducted a study to measure the various impacts of third-party debt collection on the national and state economies.³ In addition to recovering rightfully-owed consumer debt totaling \$44.9 billion in 2013 alone, the study found that third-party debt collectors directly provided over 136,000 jobs and \$6.4 billion in payroll. When factoring in jobs created indirectly, those numbers doubled to 231,000 jobs and \$12.4 billion in payroll. The study also concluded that third-party debt collectors paid \$687 million in state and local taxes and \$724 million in federal taxes. The total state and local tax impact of third-party debt collectors was \$1.3 billion, and the total federal impact was \$1.4 billion.

II. Comments of ACA International

A. General Comments on the Proposal

In order to make the Consumer Complaint Database a more valuable tool and to give consumers a greater voice, the Bureau is proposing to publish unstructured, unverified consumer complaint narratives in the Database. These narratives, which the Bureau states will be scrubbed of personal information, will be published if a consumer affirmatively consents. The Bureau proposes to allow the company's response, also scrubbed of any personal consumer information, to be published next to the complaint.

While ACA appreciates the Bureau's attempt to improve the Database, ACA continues to object to the Bureau publishing unverified complaint data on a public-facing, government-sponsored website. Given that the level of detail shared in unverified narratives is substantially more than the existing data fields currently allow, expanding the Database as proposed simply raises the stakes that the Database will mislead rather than inform the marketplace.

1. Publishing Unverified Complaint Narratives will Cause Substantial Harm to Consumers and the Marketplace.

Contrary to the stated purpose of the Database, adding unverified complaint narratives will neither "provide consumers with timely and understandable information about consumer financial products and services," nor will it "improve the functioning, transparency, and efficiency of markets for such products and services."⁴ In fact, there are several reasons why publishing complaint narratives will make the Database so skewed as to prevent it from being a helpful resource to consumers and the marketplace.

First, publishing complaint narratives without first verifying their accuracy significantly reduces the reliability and therefore usefulness of such information. Merely establishing that a complaining consumer holds an account with a named company – which is the only form of

³ Ernst & Young, *The Impact of Third-Party Debt Collection on the National and State Economies in 2013*, July 2014, available at <http://www.acainternational.org/files.aspx?p=/images/21594/theimpactofthird-partydebtcollectiononthenationalandstateeconomies2014.pdf>.

⁴ See Proposal at 42766.

verification promised by the CFPB – has no impact on the quality of the content of the complaint. Moreover, publishing a complaint on an official, government-run website creates a sense of legitimacy and reliability that is unfounded given the Bureau’s lack of verification. Thus, consumers who rely on the government-operated Database as a source of trustworthy data will be misled into believing potentially inaccurate information, and even worse, basing future financial decisions on such flawed information.

Second, there will be no disclaimers that some narratives may contain complaints that, even if true, would not be inconsistent with any law or regulation. Without such disclaimers, consumers will be misled into believing that some companies’ actions are unlawful even when they have done nothing wrong.

Third, the Proposal does nothing to alleviate the current failure of the Database to provide context to the number of complaints relative to the size of a named company. This lack of crucial information hinders informed discussion and analysis of the data, as well as the overall utility of the Database. These consequences will undoubtedly be made worse once narratives are added. Without having appropriate context, consumers will lack meaningful information for how to interpret various complaints. The unintended result is that a consumer who tries to use the Database to make more informed financial decisions may actually wind up making a worse choice because of the near impossibility of interpreting data that has not been presented in any meaningful way.

Finally, the Bureau also claims that “the utility of the overall Consumer Complaint Database would greatly increase with the inclusion of narratives” because it “could lead to increased use by advocates, academics, the press, and entrepreneurs, which itself would lead to increased consumer contacts with the Bureau.”⁵ However, ACA struggles to understand how the Database can be considered more useful to anyone by adding unverified, anecdotal data that has absolutely no guarantee of reliability or representativeness. Furthermore, because the Database is set up to focus solely on complaints – there is nowhere for positive interactions with a company to be communicated – the Database is fundamentally unbalanced and limited. This is further evidenced by the fact that reported complaints represent only a small, fractional percentage of overall communications, the large majority of which do not result in complaints.⁶ Thus, visitors to the Database are presented only with a negatively skewed picture that precludes any reliable inferences from being drawn.

Underlying all of these problems is that, in creating the Proposal, the Bureau seems to be operating under the assumption that consumers and the marketplace will benefit simply by including more data in the Database. However, “more” is not always better, and in this case, “more” actually hinders the very utility of the Database by causing it only to be more unreliable

⁵ See *id.*

⁶ See *infra* p.6, discussing that, in 2011, the percentage of consumers who actually filed complaints with the FTC was less than one-half of 1% of all consumers with debts in collections.

and more misleading. On a superficial level, it is easy to see that consumers may find narratives more accessible and therefore more enticing to read. However, the accessibility of narratives will undoubtedly cause consumers to rely more heavily on these accounts rather than other forms of more reliable data. This is especially problematic because the narratives that will be published may be factually inaccurate, deride completely lawful behavior by a company, and even when a complaint is justified, be unrepresentative of a company's overall track record.

Because of these substantial flaws, the Database will inevitably be filled with complaint narratives that are misleading at best and inaccurate at worst. The unintended consequence of such an outcome is that not only will some companies suffer undeserved reputational harm, but consumers will be harmed by relying on a government-run Database that provides no meaningful verification or context to use complaint data as a basis to make future financial decisions. These results clearly run counter to the Bureau's mission to help consumers and to promote a transparent and efficient financial marketplace. As a result, instead of expanding the Database to include unreliable and misleading narratives, the Bureau should focus on how to better screen and analyze complaints so that the Database offers access to high quality, accurate, and meaningful data. ACA would welcome the opportunity to work with the Bureau on such important efforts.

2. Publishing Unverified and Unrepresentative Complaint Narratives will Cause Substantial Harm to the Financial Services Industry.

In the Proposal, the Bureau acknowledges that it does not verify the contents of the complaints in the Database and that therefore "the narratives may contain factually incorrect information as a result of, for example, a complainant's misunderstanding or mis-recollection of what happened."⁷ While the Bureau concedes "there is always a risk that market participants will draw erroneous conclusions from available data," it believes that in some unknown way "the marketplace of ideas would be able to determine what the data shows."⁸ This hollow assurance that the "marketplace of ideas" will be able to deduce which complaints are reliable and which are not cannot override the enormous, unfair, and intangible reputational damage that will be caused to companies, both large and small, due to inaccurate or misleading narratives.

The Bureau's attempt to mitigate this risk by allowing the public release of the company's response, side-by-side to the consumer's complaint, does very little to combat the inherently skewed nature of the Database. Given important legal obligations to protect customers' privacy, companies will need to be very careful not to unintentionally disclose information that could cause its customers to be identified. To mitigate this risk, a likely strategy is that companies will be forced to offer only the most generic responses. While this approach preserves confidentiality, it does so at the cost of providing details that could more fully explain both the customer's situation and the company's response. This result deprives companies of any real

⁷ See Proposal at 42767.

⁸ See *id.*

opportunity to “tell their side of the story.” Without getting the full picture of what actually transpired, the Database will become even more skewed and even less informative.

Furthermore, it is not at all clear what problem the Bureau is trying to solve by adding consumer complaint narratives that could justify the tremendous risks of doing so. Instead, industry already seems to be responding to and resolving complaints at a high rate to the satisfaction of consumers. According to the Bureau’s recently-released Complaint Snapshot, “[c]ompanies have responded to approximately 96% of complaints sent to them and report having closed 92% of the complaints sent to them.”⁹ Furthermore, as evidence of the adequacy of the company response in resolving a consumer’s complaint, over two-thirds of consumers did not dispute the responses provided.¹⁰

In the debt collection arena, context plays a particularly large role given the high number of Americans with delinquent debt. The CFPB’s 2012 Annual Report on the Federal Debt Collection Practices Act (“FDCPA”) stated that 30 million individuals had a debt that was subject to the collections process in 2011 and, at the same time, 142,743 complaints were filed with the Federal Trade Commission (“FTC”) regarding debt collectors. Importantly, the report noted that not all complaints comprise a legal violation – as a matter of fact, the CFPB’s own definition of a “complaint” includes a consumer’s expression of mere dissatisfaction.¹¹ Based on this data, in 2011, over 29.8 million Americans with debts in collections did not file complaints. This means that the percentage of consumers who filed complaints with the FTC ***was less than one-half of 1% of all consumers with debts in collections***. In 2013, the CFPB’s Annual Report on the FDCPA notes that the volume of complaints *declined* by 13.4%, to 125,136 complaints, despite an overall rise in debt holders, with household debt increasing in the third quarter of 2013 alone by \$127 billion.¹² Not only is the complaint rate extremely low for debt collectors once placed in appropriate context, but data also shows that third-party debt collectors are highly committed to resolving consumer complaints. According to the 2013 Better Business Bureau report on Complaint Inquiries and Statistics, third-party debt collectors resolved 84% of the consumer complaints received – higher than the national average of 78% for all other businesses.¹³

Given this empirical evidence, to the extent the Bureau moves forward with its Proposal, it simply does not make sense to include complaint narratives in the debt collection context. Unlike other industries in which consumers can pick and choose with whom to do business, debt

⁹ Consumer Financial Protection Bureau, *Consumer Response: A Snapshot of Complaints Received* (July 2014)(“Complaint Snapshot”)(internal citations omitted).

¹⁰ *See id.* at 33.

¹¹ *See id.* at n.2 (“Consumer complaints are submissions that express dissatisfaction with, or communicate suspicion of wrongful conduct by, an identifiable entity related to a consumer’s personal experience with a financial product or service.”).

¹² Federal Reserve Bank of New York, *Quarterly Report on Household Debt and Credit Report* (November 2013).

¹³ *See* <http://www.bbb.org/council/consumer-education/complaints/view-national-complaint-statistics/2013-complaint-and-inquiry-statistics/>.

collection is unique in that consumers do not have the ability to select their debt collector. Thus, debt collection narratives will not carry even the marginal benefits the Bureau envisions in other contexts where narratives could influence consumer decision-making.

3. Adoption of the Proposal Will Undermine the Bureau’s Pledge To Be Data-Driven.

ACA understands and appreciates that “[l]istening to consumers and reviewing and analyzing their complaints is an integral part of the CFPB’s work in understanding issues in the financial marketplace, and helping the market work better for consumers.”¹⁴ In addition, and with good reason, the Bureau has also made clear its commitment to being data-driven when making decisions. For example, Raj Date, former Special Advisor to the Secretary of the Treasury for the CFPB, testified before the House Subcommittee on Financial Institutions and Consumer Credit, Committee on Financial Services:

“I will conclude by explaining how we will approach every issue that we work on . . . we are committed to basing our judgments on research and data analysis. We will not shoot from the hip. We will not reason from ideology. We will not press a political agenda. Instead, we are going to be fact-based, pragmatic, and deliberative.”¹⁵

Unfortunately, however, by providing a government-sponsored public platform for unverified consumer complaints, the Bureau confuses its mission to help consumers in a way that completely undermines its pledge to be data-driven. Under no circumstances can publishing data that is inherently unreliable promote consumer understanding, transparency, or fairness – all attributes that the Bureau was created to enhance in the marketplace. Being data-driven serves an important purpose – it ensures that public policy is based on an empirical reality so that real (as opposed to perceived) issues can be resolved and the market can function more effectively. Here, however, by expanding the Database with such flawed data, the Bureau casts an even greater cloud of illegitimacy over the entire Database. Not only will this reflect poorly on the Bureau, but it undermines the utility of the Database overall.

As a result, ACA strongly encourages the CFPB not to proceed with its Proposal to include narratives on the Consumer Complaint Database. Instead, the Bureau should continue to provide consumers with the opportunity to share with the Bureau their experiences in their own words privately through the consumer complaint portal and save public complaint narratives for privately-run gripe sites or other non-government operated outlets. This approach allows consumers to still “be heard,” provides the Bureau with the information that can inform its work, and allows the Bureau to determine which stories it shares publicly after performing verification of the details. At the same time, this approach keeps the Bureau consistent with its mission

¹⁴ Complaint Snapshot at 35.

¹⁵ Testimony of Raj Date, Subcommittee on Financial Institutions and Consumer Credit, Committee on Financial Services, United States House of Representatives, November 2, 2011,

while avoiding the tremendous privacy risks, unfair reputational harms, and consumer confusion that will ensue if the Bureau moves forward with publishing unverified consumer complaint narratives in the Database.

B. Comments in Response to Bureau's Specific Questions

In the Notice, the CFPB specifically seeks input on: (a) design and language issues surrounding consumer consent to disclose narratives; (b) whether a company's public-facing response to a consumer's narrative should be distinct and in addition to the response companies send directly to the consumer; and (c) the standard and methodology for scrubbing personal information from narratives, including suggestions for consumer identifiers in the financial domain and the inclusion and treatment of zip codes. With respect to the particular questions contained in the Notice, ACA offers the following comments:

(1) Consumer Consent to Disclose Narratives

The Bureau is seeking comments on design decisions that will help inform consumer consent, including precise language, timing, and location of the opt-in consent. Despite the strong legal and policy reasons for not including unverified consumer narratives in the Database, to the extent the Bureau nevertheless moves forward with its Proposal, it is critical for the Bureau to make clear to consumers that by choosing to opt-in to display their narrative publicly, they are also opting-in to the company being able to publish their side of the story publicly as well. This acknowledgment is crucial in order for the consumer's consent to be truly informed and to protect companies from liability for publicly responding to complaints in the Database. To this end, ACA advocates that the Bureau provide a safe harbor from regulatory enforcement action and private lawsuits stemming from the Bureau's publication of a company's good faith response to a consumer's complaint in the Database. Without such protection, it will be very difficult for companies to provide any meaningful response to individual complaints. This result would be harmful for consumers because they will likely not consider generic responses to be satisfactory and will therefore be more inclined to dispute a company's response; it would also be harmful for companies who will be hindered in resolving complaints in the quickest, most useful way possible.

(2) Company Response

The Bureau proposes to include a data field into which companies have the option to provide narrative text that would appear next to a consumer's narrative in the Consumer Complaint Database. The Bureau seeks comment on whether this public-facing response should be distinct and in addition to the response companies send directly to the consumer.

In ACA's view, this issue underscores the problems inherent in the Proposal. On one hand, having a company's public response be separate from what is sent to the consumer will help

alleviate some of the privacy concerns of publishing a company's response because a company can craft a more generic public response while at the same time ensuring the consumer retains the benefit of receiving a fulsome explanation from the company. The downside of having a company's response be distinct is that it will be unduly burdensome for companies to expend the significant resources to develop two separate responses for each complaint received. Moreover, in order to comply with privacy obligations, the public response under this model will have to be so stripped of important factual information that it would be difficult for consumers visiting the Database to glean any meaningful insight into how a company actually handled a particular complaint.

On the other hand, having a single company response raises its own issues. While certainly less burdensome, companies will be forced to respond in only the most generic terms in order to insulate themselves from running afoul of their privacy obligations. As a result, having one public response would undoubtedly deny the customer the ability to get a full picture of a company's explanation and actions. Furthermore, under both models, because the public response will have to be so stripped of important factual information it will be difficult for consumers to glean any meaningful insight into how a company handled a particular complaint. This result seems to substantially undercut a company's ability to tell its side of the story – a critical component of the Proposal, and one that the CFPB seems to agree is important.¹⁶

This conundrum can easily be resolved, however, if the Bureau abandons its Proposal. Without the risk of having a company response be public-facing, companies can fully provide an explanation to resolve any complaint received without undue burden and without any fear of improperly disclosing private customer information. At the same time, customers will benefit from receiving a comprehensive response from companies seeking to resolve complaints.

(3) Personal Information Scrubbing Standard and Methodology

Other than noting the contradiction in the Bureau's previous commitment "to not publish narrative data until such time as the privacy risks of doing so have been carefully and fully addressed,"¹⁷ and the Bureau's own admission in the Proposal that it still in the midst of "conducting a study to further verify that the proposed scrubbing standard and methodology will sufficiently address concerns related to the FOIA, the Privacy Act, the Dodd-Frank Act, and the Bureau's confidentiality regulations,"¹⁸ ACA does not have additional substantive comments to add related to this section.

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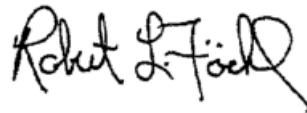
¹⁶ See Proposal at 42767 (stating "to mitigate this risk [of harm to financial institutions], the Bureau's proposed policy provides for the public release of the company's response, side-by-side and scrubbed of any personal information, to the consumer's complaint. This process will assure that, to the extent there are factual disputes, both sides of the dispute can be made public.").

¹⁷ See 78 Fed. Reg. 21218, 21224 (April 10, 2013) ("March 2013 Policy Statement").

¹⁸ See Proposal at 8-9.

ACA appreciates the opportunity to provide comments on the Proposed Policy Statement and respectfully urges the CFPB to forego moving forward with expanding the Consumer Complaint Database to include narratives. To the extent there are any marginal benefits to the Bureau's Proposal, they are all significantly outweighed by the tremendous risk of harm to consumers, the financial services industry, and the Bureau that publishing unverified complaint narratives poses.

Respectfully submitted,

A handwritten signature in black ink that reads "Robert L. Föehl". The signature is written in a cursive style with a large, stylized 'R' and 'F'.

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