



The Voice of the Retail Banking Industry

September 22, 2014

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

Re: **Proposal to Disclose Consumer Complaint Narratives**
Docket No. CFPB–2014–0016

Dear Ms. Jackson:

The Consumer Bankers Association (“CBA”)¹ appreciates the opportunity to comment on the Consumer Financial Protection Bureau’s (“CFPB” or “Bureau”) notice of proposed policy statement concerning disclosure of consumer complaint narratives through the Bureau’s complaint portal (“Proposal”). While CBA supports the Bureau’s ability to confidentially collect complaint data in order to better serve consumer complaint resolution, we strongly oppose the public disclosure of any consumer complaint information, including narratives.

As discussed in greater detail below, CBA believes the Bureau’s proposal is ill-advised and creates bad policy for a number of reasons, primarily:

- 1) The CFPB is under no mandate to publish consumer complaint data and has a statutory responsibility to protect sensitive consumer information.
- 2) The Proposal does not adequately protect consumers’ personally identifiable information (“PII”), thus creating the potential for serious risk of re-identification of individual complainants and possibly causing harm to consumers.
- 3) Financial institutions will be restricted from offering complete responses, if any, to individual narratives presented publicly through the Consumer Complaint Portal for fear of violating federal privacy laws, thereby resulting in a one-sided unsubstantiated complaint process with the potential to misinform consumers and causing possible harm.

¹ The Consumer Bankers Association is the only national financial trade group focused exclusively on retail banking and personal financial services — banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation for its members. CBA members include the nation’s largest bank holding companies as well as regional and super-community banks that collectively hold two-thirds of the total assets of depository institutions.

- 4) The Consumer Response Portal presents a skewed and misleading representation of the current financial services market by publishing unverified complaints that are neither normalized or a complete representation of the entire financial services industry, offering no benefit to consumers.
- 5) To the best of our knowledge, the Bureau has done no internal review of the use of the current Consumer Response Portal by consumers in making decisions on whether to patronize a particular financial institution or use their products or services and has no data to support the notion that the portal provides consumers with a useful tool for comparing financial products and services.

Description of proposal

The Proposal continues the CFPB's trend of gradually expanding the Consumer Response Portal ("Database") to include new data fields and additional types of financial products. Currently, the Database includes information such as the consumer zip codes, the financial product type, and the company's name and response to the consumer's complaint. Under the proposal, the CFPB would add the consumer's personal description of the complaint to the publicly viewable complaint data. The Proposal requires a consumer opt-in to make the narrative portion of a consumer's complaint public in the CFPB Database. Informed consent on the part of the consumer would be obtained prior to making the narrative public. The consent or "opt in," would be obtained on the CFPB's website after providing the consumer with the following three disclosures:

- 1) Whether or not consent is given will have no impact on the Bureau's handling of the complaint;
- 2) If consent is given, the consumer may withdraw consent at any time and the narrative will be withdrawn; and
- 3) The Bureau will take reasonable steps to remove PII to minimize (but not eliminate) the risk of re-identification.

The Proposal states it will redact any PII. In doing so, the Bureau states it will apply a "robust personal information scrubbing standard and methodology." The Bureau will use an approach modeled on the HIPAA Privacy standard of the US Department of Health and Human Services for de-identification of health data.² Though some of these data points are health related (e.g. medical records), the Bureau proposes to use financial services analogs where appropriate. The Bureau will use both a computer-based automated procedure for de-identification and follow it with a "quality assurance" measure supervised by human reviewers.

² The HIPAA safe harbor method requires removal of 18 items for datasets: names, geographic subdivisions smaller than a state, dates related to an individual, phone numbers, fax numbers, email address, Soc. Security numbers, medical records, health plan beneficiary numbers, account numbers, certificate/license numbers, vehicle ID and serial numbers, device identifiers and serial numbers, web universal resource locators, internet Protocol addresses, biometric identifiers, full-face photos, any other unique identifying numbers, characteristic or code.

The Bureau proposes to include a data field on the public portal where companies have the option to publicly provide their response to the complaint in a narrative text. The text will appear next to the consumer's narrative in the database. The proposal states the company would be instructed to avoid the inclusion of PII in the public narrative; however, the Bureau says it will also take reasonable steps to remove PII to minimize (but not eliminate) the risk of identification. The proposal seeks comment on whether the narrative response should be the response provided to the consumer, with PII redacted, or should be a separate narrative written to be put in a public database.

Discussion

While the CBA fully supports transparency and the availability of useful information to consumers, we strongly oppose the current Proposal. We do not believe the Proposal will achieve meaningful transparency or other practical benefits for consumers without exposing them to significant risk to privacy and other harm. The Proposal's call for the inclusion of unsubstantiated narratives may, in fact, stymie effective communication and engagement between financial institutions and customers who seek to address and resolve questions and complaints.

Financial institutions believe that one of the greatest barriers to a narrative database as contemplated by the Proposal is the myriad of security and privacy risks to consumers. Inclusion of even de-identified information will pose significant consumer harm, particularly in an environment where hackers and other malefactors continue to target sensitive financial information. Information released without verification of accuracy or validity, context, and including unresolved and mischaracterized issues, does consumers a disservice and unfairly causes reputational harm to the companies that are the subject of the complaints.

The Bureau continues to expand the Database without recognition of the impact on the consumers and the companies involved, undermining the purpose of the Database by introducing unverified allegations into the public domain without a meaningful opportunity for a financial institution to respond. We strongly believe the Bureau's Proposal to expand the Database may have significant unintended adverse consequences to consumers and financial institutions. We urge the Bureau to reconsider its policy of adding narratives to the Database.

The CFPB is statutorily mandated to protect consumers' proprietary, personal and confidential information

Although the CFPB asserts the Proposal furthers the Bureau's mandate to ensure consumers are treated fairly in the financial marketplace, no mandate exists for the CFPB to publicly release sensitive complaint-specific information. There are no provisions in the Dodd-Frank Wall Street Reform and Consumer Protection Act ("DFA"), or any other law, that require or even contemplate public disclosure of complaint information. DFA provides the CFPB with the authority to monitor financial markets and authorizes the CFPB to establish a complaint database merely to "facilitate the centralized collection of, monitoring of, and response to

consumer complaints regarding consumer financial products and services.”³ The CFPB contends that publicly disclosing information from the Database will assist in this mission by providing outside parties with the ability to help identify trends and patterns that will in turn help better inform consumers when choosing financial products and services.

Section 1013(b)(3) and Section 1034 are the two provisions in DFA that specifically outline the authority, purpose, function, and limitations of the consumer complaint system. Section 1013(b)(3) outlines the establishment of the process for collecting and tracking complaints as part of the CFPB’s administrative function, including the development of the Database. This includes the requirements for submitting reports to Congress on consumer complaints and the sharing of the information with other agencies. Section 1034 provides specific details with regard to the process and limitations regarding the procedures for responding to consumer complaints.⁴

Neither of these provisions specifically reference nor contemplate the public disclosure of information contained in the Database. The only provision that references public disclosure is Section 1022(c)(3)(B). While this provision clearly references the public disclosure of “aggregated” reports, at no point does it mandate the creation of a public database that would include complaint-specific information. Reliance on this provision is misplaced because it refers to the CFPB’s general rulemaking authority and only references consumer complaints as one of a number of sources that the CFPB may use for monitoring risks to support rulemaking functions. This does not justify the CFPB’s overreliance on this provision for publicly disclosing complaint-specific information, especially when there are two other provisions in DFA that specifically outline the authority and functions of the consumer complaint process.

To the contrary, DFA requires the CFPB to ensure that any “proprietary, personal, or confidential consumer information” the Bureau collects is protected from public disclosure.⁵ DFA also requires the CFPB to observe “standards applicable to Federal agencies for protection of the confidentiality of publicly identifiable information” when it shares complaint information with other regulators.⁶ These provisions indicate that Congress intended the CFPB to share sensitive information only when doing so confidentially. As discussed in greater detail below, CBA does not believe the CFPB has adequately shown that it can safely and confidentially publish consumer complaint data without significant privacy concerns.

The CFPB has stated that its proposed inclusion of complaint narratives is no different from the practices of the Consumer Product Safety Commission (“CPSC”) and the National Highway Traffic Safety Administration, which also publish consumer narratives in their respective complaint databases. However, unlike the CFPB, Congress expressly required these other agencies to create consumer complaint databases. And whereas Congress specified that

³ DFA, §1022(c)

⁴ DFA, §1013(b)(3)(A)-(D) - Congress did contemplate disclosure of complaint information but chose to do so only in specific circumstances involving certain specific disclosures of information to state and federal agencies and reports to Congress.

⁵ DFA, §1022(c)(8)-(9)

⁶ DFA, §1013(b)(3)(D)

those agencies' databases shall be publicly available, as previously stated, Congress specified that the CFPB must protect confidential consumer information from public disclosure.

Without a clear statutory mandate, the CFPB should refrain from publishing complaint narratives until it has completed an exhaustive analysis of the risks involved.

The Proposal creates consumer harm and privacy concerns

As financial institutions, CBA member banks remain dedicated to maintaining the privacy of our customers' information. Financial institutions are subject to strict legal prohibitions restricting the release of personally identifiable information, with severe penalties for noncompliance.⁷ Federal consumer privacy laws and contractual requirements will prevent or, at the very least, severely impede the ability of financial institutions to respond publicly to consumer narratives in a candid and complete manner.

The proposal does not protect consumers from re-identification risks and creates consumer harm

The CFPB claims privacy is not a serious concern because "modern scrubbing standards" can de-identify nonpublic, personal information to "acceptable levels." However, the financial services industry is concerned about re-identification risks inherent in the Database and their potential harm to consumers. CBA believes the Proposal does not provide enough detail on how a consumer's sensitive information will be scrubbed. The Proposal, as well as the CFPB's current practice of publishing complaint data, raises significant risks that the public will readily be able to use the Database to discover information that should be protected. Any standard for scrubbing sensitive data that the CFPB may employ will never fully guarantee that all sensitive personal and financial information will be kept confidential. For example, while a consumer's name and address could be scrubbed from a narrative, reference to his or her profession, location and other specific, un-redacted information could be used to re-identify the person.

In fact, the CFPB acknowledges that the Database could enable someone to re-identify a consumer who files a complaint. The implications of re-identification in this context could have very real negative consequences for a large group of consumers. Even if just a very small percentage of consumers utilizing the Database were to be re-identified, the consequences could still be great. For example, if just one percent of the roughly four hundred thousand complainants currently logged in the Database were re-identified and used for malfeasance, thousands of Americans would be put at risk of severe harm, creating a significant problem for a large number of consumers.

⁷ The Gramm-Leach-Bliley Act, the Fair Credit Reporting Act, the Fair and Accurate Credit Transactions Act, and the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act.

These concerns are amplified in light of recent data breaches. Re-identification is easily done and is common practice for sophisticated criminals. The associated unlawful activities that usually result from re-identification including fraud and identity theft impose great harm on consumers and may impose mitigation costs for monitoring, new cards/account numbers, and a variety of security measures that financial institutions will have to take on as a result. This database will be low-hanging fruit for criminals looking for highly sought after financial information. Even as proposed, consumers would have to affirmatively consent or opt-in before publication of a complaint narrative, most would not understand these associated risks and would simply trust the Bureau to adequately protect their confidential information.

To the best of our knowledge, the Bureau has yet to conclude any testing of its proposed methodology for scrubbing sensitive and confidential consumer data. We strongly believe the CFPB should refrain from moving forward with the Proposal until the public has had an opportunity to understand and test that methodology.

Financial institutions would be subject to legal restrictions in replying to narratives

It is easy to imagine publicly available narrative responses, if any, made by financial institutions will lack the details necessary to substantively respond to a complaint. Financial institutions would in many instances be prohibited or severely limited in their ability to provide fair and accurate responses to consumer narratives due to potential privacy and legal concerns that may be caused by the public disclosure of narrative information that includes PII. The Proposal creates a situation in which the purpose of enhancing transparency is materially contravened by the nature of financial institutions' commitments to their customers and their statutory and regulatory obligations. As such, the goal of achieving an open and transparent narrative database is relatively unrealistic and impractical because financial institutions would be unable to provide meaningful responses that do not violate existing legal and regulatory obligations.

Specifically, the Proposal is inconsistent with the financial privacy obligations financial institutions must observe under existing laws and regulations, including the Gramm-Leach-Bliley Financial Modernization Act ("GLBA").⁸ These privacy laws and regulations restrict a financial institution from disclosing and/or re-disclosing PII, including financial records, to third parties or government authorities. The existence of a customer relationship and the existence of a consumer complaint are both types of nonpublic personal information that the GLBA prohibits financial institutions from divulging absent informed consumer consent.

If a consumer were to consent to the CFPB's publication of the complaint narrative, the financial institution would not thereby be permitted to publish its narrative. Again, the financial institution is subject to GLBA and other privacy laws and may not divulge nonpublic personal information unless it provides the consumer notice and an opportunity to opt-out. The financial institution may not rely on a notice provided by, and an opt-in election provided to, another

⁸ GLBA, 15 U.S.C. § 6801-6809.

entity for another purpose. A CFPB notice to a consumer, and a consumer's opt-in delivered to the CFPB, would not permit the financial institution to divulge information because GLBA and its implementing regulations require the institution to provide the notice and opportunity to opt out.⁹

A financial institution is expressly prohibited from relying on a privacy notice and an opt-out opportunity provided by another party. This is an important consumer protection because the financial institution must ensure that the privacy notice and the opt-out are sufficient. In the CFPB's case, the consumer receives no notice that filing a complaint with the CFPB enables the public to discover and misuse the consumer's nonpublic personal information. Financial institutions cannot act on elections to opt-in that are based on inadequate privacy disclosures.

Additionally, publishing narrative responses when the bank and customer disagree could open up claims of libel from a customer who is determined to pursue legal recourse. It can also provide a legal foundation for commercial libel claims by the bank against a customer who knowingly made material and false statements that disparage the bank's reputation in published complaint narratives. This will likely fuel the fire and contention between a consumer and its bank rather than promote resolution, thereby subverting the objectives of the Database and lowering the level of discourse rather than providing meaningful insights into the underlying dispute that would be of value to a consumer in evaluating either a particular financial institution or the benefits or limitations of any particular financial product or service being offered.

Customer relationship and other concerns will stifle financial institutions from providing robust responses

Perhaps more important than legal concerns, CBA believes financial institutions will conclude that publicizing substantive responses to their customers' complaints would only serve to chill the dialogue needed between the customer and the financial institution to achieve an effective resolution. Moreover, it would be certainly possible that public substantive responses could be used by some to assert that an institution is willing to treat its customers poorly in a public forum. It is certainly reasonable for an institution to conclude that the potential reputational harm from proving substantive responses would outweigh the reputational harm from leaving consumer narratives unaddressed.

As financial institutions may not be able or unwilling to provide even scrubbed narratives for public consumption due to the risk of re-identification and legal and reputational concerns, it is likely many would incorporate boilerplate responses, providing little, if any, usefulness to consumers. Since the absence of a narrative response in some cases may appear exculpatory, many companies will feel compelled to offer something, however lacking in substance, such as,

⁹ 12 C.F.R. § 1016.10(a)(1) (emphasis added).

“The company is taking steps to review the complaint,” or “We try to serve our customers’ needs, etc.”¹⁰

Lastly, responding to published narratives would be overly burdensome as already strained bank resources would need to be realigned, or additional resources acquired, to timely and proficiently provide a bank’s response to publicly viewed complaint narrative, regardless of the validity or nature of the complaint. These increased costs will likely be passed on to the consumer or diverted from much need research and development budgets. Also, the need for such expediency to protect a bank’s reputation, to respond first to published complaints over more exigent matters, could result in delays in handling other more substantial complaints and emerging risks, undermining the CFPB’s objective to facilitate greater financial services to all consumers.

A financial institution’s response would not provide clarity on the veracity of the complaint

The Bureau contends that the opportunity for industry to respond to the narrative “will assure that, to the extent there are factual disputes, both sides of the dispute can be made public.” However, providing for a company response gives no better opportunity for the public to assess a complaint’s validity. Unless the response affirmatively acknowledges wrongdoing and supports the points made in the complaint, it will only provide a narrative disagreement with the facts, if any, presented in the narrative. Moreover, the details needed to adequately provide useful responses will often contain PII that would be redacted by the company or the CFPB. Without that information, one would be hard pressed to determine whether the complaint has any validity. Thus, it is difficult to see how the reader of these disputing narratives will have any basis upon which to judge the veracity of either.

The Proposal would not enhance consumers’ ability to compare

According to the CFPB, the purpose of the Database is “to provide consumers with timely and understandable information about . . . products and services, and improve the functioning, transparency, and efficiency of markets.” This is consistent with the purpose of the CFPB as promulgated in Section 1021 of the Dodd-Frank Act; however, we do not believe adding the narrative would accomplish this purpose. Indeed, we have long maintained, and stated in previous comments, the public database with unverified information does a disservice to

¹⁰ The recent Social Media Guidance, which was adopted by the Bureau and other members of the FFIEC, discusses the reputational risk posed by critical or inaccurate statements on social media and says that an institution “is expected to take into account the results of its own risk assessments in determining the appropriate approach to take regarding monitoring of, and responding to [internet] communications. CBA notes that banks, when deciding whether and how to respond to a narrative on the Bureau’s portal, would be faced with quandary of balancing the expectations of this guidance against legal and reputational concerns discussed above. The Proposal, however, provides no guidance or suggestions to institutions on how to navigate this assessment. https://www.ffiec.gov/press/PDF/2013_Dec%20Final%20SMG%20attached%20to%2011Dec13%20press%20release.pdf

consumers and does not improve the functioning, transparency or efficiency of markets. The addition of the narrative will only exacerbate this problem.

The CFPB does not validate complaints

The CFPB states the definition of complaints as follows: “*Consumer complaints are submissions that express dissatisfaction with, or communicate suspicion of wrongful conduct by, an identified entity related to a consumer’s personal experience with a financial product or service.*”¹¹ But the CFPB does not attempt to verify the legitimacy or accuracy of the information provided by the consumers, except to ensure the consumer is in fact a customer of that company, and the company is a covered financial service provider. This is stated on the portal website, but this fact alone does not give consumers adequate information to draw conclusions about the data. If the CFPB is releasing results, consumers can be excused for believing the information is legitimate, notwithstanding any disclaimer to the contrary. Releasing the narrative information on each complaint, would not give enough information for the public to draw any information on the validity of the complaints.

Since the Database seemingly places great importance on the total number of complaints by institution, the Bureau should validate complaints before publishing the information. Entire categories of would-be complaints do not fit the extremely broad definition referenced above or are created for different purposes. For example, many complaints related to debt collection are submitted merely because debt is being collected and without any real allegation of wrongful conduct. Other types of complaints do not allege wrongdoing by the institution at all, but are submitted to the CFPB because it advertises itself as a place to send complaints. Billing errors, for example, often do not involve any claim of wrongdoing by a bank and are often quickly resolved once brought to the bank’s attention. Yet in some cases consumers will file complaints with the CFPB rather than directly with their bank first. Similarly, it is important for consumers to contact their bank about issues of ID theft or fraud, but almost all the time these are not alleging wrongdoing by the bank. Instead, they are asking the bank to assist by closing an account or reissuing a card. Other submissions to the CFPB which may get inappropriately logged as complaints are essentially service inquiries, with no real allegation of wrongdoing. It is incumbent upon the CFPB to identify these submissions, as they do not become complaints merely because they have been entered into the Database. And of course, there will always be some complaints from those with an ax to grind and no legitimate complaint. The Bureau claims the risks posed by the lack of validation are offset by the “marketplace of ideas” when the narrative information is included. We disagree.

Adding the narrative does not provide the public with more information upon which to draw a conclusion about the legitimacy of these complaints, because the public has none of the information available to the CFPB to assess the complainant’s veracity or the merits of the complaint itself. The details accompanying a complaint are simply details, and without the ability to confirm their accuracy or analyze their context, the public cannot use them to draw valid conclusions. Indeed, the color provided by narratives can often mask facts by creating sympathetic details that seem to lend credibility to the complaint. It is the role of a supervisory

¹¹ Consumer Response Annual Report, July 21 - December 31, 2011, at 3

Consumer Bankers Association 1225 Eye Street, NW, Suite 550 ♦ Washington, DC 20005 ♦ 202-552-6382

agency to draw the correct conclusions after research and inquiry. At the very least, the Bureau should conduct a sample test of the complaint data to determine the validity of complaints.

As previously discussed, the CFPB has made comparisons to existing public complaint databases, such as the database maintained by the CSPC. However, unlike the CFPB Database, the CSPC will take steps to verify accuracy of complaints when requested.¹² Under regulation, any person and/or company may request for determination of materially inaccurate information on the CPSC complaint database. If a report is determined to be materially inaccurate, the CPSC will take steps to ensure the inaccuracy is corrected. If the CPSC determines the information is materially inaccurate before publication, the CSPC will not add the information to the database, correct the materially inaccurate information, or add information to correct the inaccuracy. If the CPSC determines the information is materially inaccurate after publication, within seven days of the determination, the CPSC will remove information, correct the materially inaccurate information, or add information to correct inaccuracy.

The CFPB does not normalize the data

The skewed nature of the Database will result in harm to consumers as the information contained within the system is not normalized and gives the consumer no real basis to make an informed decision. The Database currently contains nearly a half million complaints making it safe to assume that the everyday consumer will not have the ability to peruse every complaint narrative and response for a particular product or institution. Consumers will be left to rely on browsing a limited number of complaints and raw numbers compiled by someone outside of the Bureau. These raw numbers can be used to paint an unjustified picture of certain institutions represented in the Database. For example, a recent article entitled “America's 10 Most Hated Banks” singled out banks represented in the Database with the highest levels of complaints. The title was followed by a caption reading, “According to the Consumer Financial Protection Bureau, these financial institutions draw the most complaints,” giving the impression that the institutions with the most complaints corresponds with having the most unscrupulous practices.¹³ To the contrary, this headline could have instead easily read “America’s Most Popular Banks” as the banks listed are by far some of the largest banks in the country with the most customers. It would stand to reason banks with more customers would receive a higher overall number of complaints because they are serving more people. Because the data in the Database is not normalized, it can easily be taken out of context by consumers or manipulated by industry critics. While the Bureau did not write the above-referenced article, by not normalizing the data in the Database, they have endorsed the use of the data to make interpretations that are unproductive and provide consumers with no utility.

The CFPB does not collect complaint data for banks under \$10 billion in assets

Additionally, it is important to note that the CFPB’s database is limited to those banks that fall within its supervisory and examination authority – entities with assets of \$10 billion or

¹² 16 CFR 1102.26

¹³ America’s 10 Most Hated Banks, Mother Jones - <http://www.motherjones.com/politics/2014/07/consumer-financial-protection-bureau-complaints-banks>

Consumer Bankers Association 1225 Eye Street, NW, Suite 550 ♦ Washington, DC 20005 ♦ 202-552-6382

more. The inclusion of identifying information, including narratives, only results in a misrepresentation of financial institutions included in the Database – approximately 110 banks out of nearly 7,000 in the country. Coupled with un-normalized data, the representation of just a minor portion of U.S. financial institutions in the portal gives the illusion that larger banks are “bad actors” and should be avoided. By making this information public, the Bureau—the agency created to “level the playing field”—will have created an un-level playing field in this area, providing little value to the consumer when trying to make informed decisions about which financial firms they would like to do business with.

The Proposal does not provide for the ability to amend existing complaints

The publication of complaint narratives does not allow for clarification or amendment opportunities as a complaint is being resolved, nor are there parameters for removing a complaint narrative once a matter has been resolved. Ultimately, this will provide misinformation to consumers and the public which undermines the CFPB’s objecting of providing consumer current and accurate information to make informed choices and will erode consumer confidence in the financial services industry.

Comparisons to other customer feedback services

The Bureau appears to consider the inclusion of complaint narratives will enhance the value of the Database as a consumer product review site, equivalent to websites such as Yelp, and that the addition of the narrative would be helpful for consumers’ purchasing decisions. “Research has shown,” the Proposal says, “that consumer word of mouth (which includes consumer reviews and complaints) is a reliable signal of product quality that consumers consult and act upon when making purchasing decisions.” However, we believe this is not the case with the Bureau’s Proposal, which gives voice only to complaints and not endorsements.

Yelp, and most other sites consumers use as shopping review services, contain both negative and positive remarks about businesses, services, and products. Shoppers can read the narratives for both kinds of comments and draw their own conclusions. The CFPB’s Consumer Response Portal is a misnomer. Despite the name, it is, and was always intended to be, a complaint site. The web site encourages “complaints” only, and if a comment is posted that is not negative, it is still filed as a complaint and logged in among the total of complaints. If a consumer has a positive comment to make, the CFPB steers them to a different site where narratives of all kinds are included. None of these are compiled or reported in the CFPB’s regular reports. Thus, if a consumer is using the Database for shopping, they are getting a one-sided view of the companies.

Additionally, unlike Yelp or any other independent complaint tool, the publication of complaint narratives in a government sponsored database provides immediate legitimacy of “truthfulness” to un-vetted, un-adjudicated complaints, thereby causing substantial and likely irreversible reputational harm. Consumers understand sites like YELP may contain inaccurate information; however, consumers will give more credibility to a governmental site and are likely to believe what is published is true as government databases are supposed to imply validity.

These databases can move markets and often become standard baseline data sources. Here we have a government agency charged with protecting consumers in the financial market creating a data set that lacks integrity and is being served up to the consuming public leaving the impression that it has received an imprimatur of the federal government. Potentially inaccurate, unverified and misguided complaints could become the basis on which consumers will make judgments about their financial relationships.

The CFPB lacks of sufficient data to justify the publication of consumer complaint narratives

The Bureau, which purports to be a “data driven” agency, makes several claims to support its proposal, but provides absolutely no research or statistical evidence to support the claims. For example, the Bureau says the addition of the narrative information may “expand the number complaints submitted.” It concludes that some consumers submit complaints in order to “share their experience” with others. It also assumes that some consumers may complain only if they have the opportunity to share their story, and others may “overcome their reticence” after reading submissions by others. That publishing the narratives would make the data more “impactful” by making it more “personal,” “local,” and “empowering.” That the utility of the overall database would greatly increase. That it would increase use by stakeholders (e.g. advocates, academics, press, and entrepreneurs) and enhance the functions of other CFPB operations. However, nowhere does the Bureau provide the substantiation for these vague and optimistic claims.

To the contrary, one can just as easily imagine the inclusion of the narrative in the public database may decrease the database’s utility and value. If the consumer knows the narrative will be public, it is conceivable some may use it as an opportunity to tell their side of the story by painting colorful and even exaggerated versions to elicit a sympathetic public response. If the communication were intended only for the company and the regulatory agency, they may respond very differently. In short, we do not know how the public narrative database will change the way consumers behave, and the Bureau should not claim the support for this action is clear.

In prior policy statements concerning the Database, the CFPB committed itself to refraining from publishing complaint narratives until it had studied the risks involved and concluded that it could proceed safely. The Bureau has indicated it is indeed studying the issue; however, it has not concluded its research and the results are unknown. We question the timing of the Proposal in light of the unfinished study. It stands to reason that the Bureau would support its conclusions with empirical data, if indeed the results were supportive. Instead, when the data is not there, or not supportive of the CFPB’s own bias, the core value of being “data driven” is conveniently abandoned when it does not support the agency’s purposes.

Conclusion

CBA opposes the proposed expansion of the Database to include published consumer complaint narratives because it will not enable better, more accurately informed consumers. We believe strongly that the Bureau should reconsider its assertion of statutory authority and the process by which it has chosen to act. Neither reflects the principles of accountability, transparency, and data-driven decision making which the Bureau professes guide its work. Rather than continue to pursue a path via “policy statement,” we urge the Bureau to focus on the statutory mandate assigned by Congress –overseeing the individual response to consumer complaints, analyzing complaint data for supervisory oversight purposes, and aggregate reporting to Congress. CBA looks forward to working with the Bureau in support of those goals that benefit consumers and help enhance customer service by the banking industry.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Pommerehn", with a long horizontal flourish extending to the right.

David Pommerehn
Senior Counsel
Consumer Bankers Association