

July 19, 2012

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

Re: *Docket No. CFP-2012-0023*
Notice of proposed policy statement regarding disclosure of consumer complaint data related to non-credit card financial products
77 FR 37616 (June 22, 2012)

The American Bankers Association (ABA)¹ respectfully submits its comments to the Bureau of Consumer Financial Protection's (Bureau) proposed Policy Statement regarding its disclosure of data from consumer complaints about financial products and services other than credit cards. The proposed Policy Statement for non-credit card products is the same as the final Policy Statement the Bureau adopted separately for credit card complaint data on June 19, 2012. Under the final policy that the Bureau is proposing to apply to "certain other consumer loans as well as bank products such as checking and savings accounts, check cashing services, and remittance services," the Bureau releases periodic reports aggregating complaint data and also an electronic database containing certain fields for each complaint, including the type of complaint as characterized by the complainant and the name of the financial institution. The Bureau does not verify the accuracy or validity of the complaint, though it attempts to identify duplicates and ensure that the correct financial institution is identified.²

We find the Bureau's decision to publish details of complaints which it correctly characterizes as unverified and therefore unreliable, to be contrary to its mission to help consumers "with timely and understandable information to make responsible decisions about financial transactions"³ and inconsistent with its proclamations to be "data-driven." The Bureau's proposed extension of this standard of disclosure to complaints about mortgages and other financial products only exacerbates the disservice to consumers and further misrepresents the information that the complaint database collects for the supervisory purposes that Section 1034 (b) of the Dodd Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) makes available not only to the Bureau, but to bank prudential regulators as well.

While the Bureau has taken some steps to more accurately categorize complaint resolution data, publishing the identity of an issuer or other covered person in connection with individual complaint data still results in the association of that entity with unsubstantiated and unwarranted criticism that will misinform rather than enlighten consumers.

¹ ABA represents banks of all sizes and charters and is the voice for the nation's \$13 trillion banking industry and its two million employees. The majority of ABA's members are banks with less than \$165 million in assets.

² The Consumer Complaint Database webpage contains the statement, "We do not verify the accuracy of these complaints, but we do take steps to confirm a commercial relationship between the consumer and the identified company."

³ 12 U.S.C. 5511(b)(1). (Section 1021(b)(1) of Dodd Frank Act.)

The Bureau should not publish unreliable data that will mislead rather than inform consumers.

For reasons discussed in our prior comment letter on the Policy Statement applied to credit card accounts of January 30, 2012,⁴ we find the Bureau's decision to adopt and propose to propagate a policy to publish details of complaints, which it correctly characterizes as not verified for accuracy and therefore unreliable, to be inconsistent with its proclamations to be "data-driven" and contrary to its mission to "provide consumers with timely and understandable information to make responsible decisions about financial transactions" and "[enable] more informed decisions about credit card use." Moreover, it is difficult to reconcile the statement on the Bureau's Consumer Complaint Database webpage that the Bureau does "not verify the accuracy of these complaints," and its earlier statement that a large volume of complaints presented "conflicting factual accounts"⁵ with the Bureau's public statement, "Consumers can look at this data and can fairly draw the conclusion that if they engage in a financial relationship with the company this is what they can expect."⁶

Yet, as the Bureau has acknowledged earlier, but did not note, let alone highlight, in the database, press release, or numerous other documents and websites publicizing the database:

- The complaints are not necessarily representative of the experience of all consumers and represent the experience of a non-random subset of consumer.⁷
- A low rate of offering responses that consumers accept may reflect a financial institution's failure to respond to legitimate grievance, but also may reflect that the financial institution has effective internal complaint process and/or low-complaint products.
- The Bureau makes no judgment about the customer's expectation and whether that expectation is reasonable e.g., an expectation of virtually instant processing or response, of reaching customer service during non-business hours.
- The data do not reflect whether the complainant sought to resolve the issue with the financial institution prior to filing a complaint with the Bureau.

We hope the Bureau will strive to "follow reasonable procedures to ensure maximum possible accuracy of the information"⁸ just as it expects other consumer data information entities to do. In its recent announcements about its rule to supervise larger consumer reporting agencies, the Bureau emphasized the importance of accurate, reliable data. "Accuracy is critical for consumers and for markets."⁹ The same is true for publically released government complaint data. Just as wrong information in consumer reports may harm consumers, wrong information from a government agency may harm consumers, financial institutions, and markets.

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<http://www.aba.com/Issues/Regulatory/Documents/ab177a6de4b941fcb4e6e9126dc4dadd13012CFPBLetterreCreditCardComplaintDataRevisedFin.pdf>

⁵ Page 4 of the Bureau's Consumer Response Interim Report.

⁶ Scott Pluta, Acting Assistant Director of the Office of Consumer Response of the CFPB,, "U.S. Consumer Bureau Discloses credit-card complaints," Reuters, January 29, 2012)

⁷ The Bureau stated in the Supplementary Information to its proposed Policy Statement for credit card complaints that the complaints "are not necessarily representative of the experience of all consumers with a particular . . . product or issuer. Rather the credit card complaints submitted to the Bureau represent the experience of a non-random subset of credit card consumers: those who view themselves as aggrieved by an action or inaction of an issuer who were unable to obtain satisfactory relief from the issuer (or who elected not to seek such relieve). . ." Its database, press releases, and other public documents should reflect this.

⁸ Prepared Remarks of Richard Cordray, Credit Reporting Field Hearing, Detroit, Michigan July 16, 2012.

⁹ *Ibid.*

The “marketplace of ideas” will not address the database’s deficiencies or lack of due process for financial institutions. The Bureau’s reliance on the “marketplace of ideas” to lead to readily reliable information about individual covered persons is undermined by its own selective use of anecdotes, highlighted in its press release, that imply that other consumers will be treated similarly. This spinning of complaint data cannot be corrected by disclaimers. The press release and other website feature treatment of these select complaints create a misimpression that other consumers will experience similar results. Simply saying, “Your experience may vary,” does not undo the intended promotional impression left by the use of unrepresentative examples.

The Bureau’s reliance on the marketplace of ideas” is also undermined by the Bureau’s failure to put the data into context by comparing it with the potential pool of complainants, as other government agencies do, and its omission in its press release and other public documents of important qualifications about the accuracy and reliability of the data. Omitting such important information does not promote open, informed discussion in the marketplace of ideas.

Moreover, the Bureau’s wishful reliance on the marketplace of ideas in this context is inconsistent with the statutory mandate it is attempting to fulfill. It argues that its purpose in releasing the data in this format is to fulfill its mission to provide consumers “with timely and understandable information to make responsible decisions about financial transactions.” It then admits that the data may not be accurate, and thus unreliable and potentially misleading to consumers and fails to normalize the data, but hopes “experts” will sort it all out before consumers mistakenly use it.

Government agencies are not the same as other “gripe site” sponsors. Moreover, the Bureau’s approach raises questions about the balanced review expected from government agencies. Government agencies are generally expected to have a higher standard than gripe outlets and websites such as “Yelp,” and not simply offer reports of unsubstantiated rumors. Rather, the government’s imprimatur suggests certain reliability beyond simply attempting to control for duplicates and the correct identification of the financial institution. Therefore, some in the “marketplace of ideas” will be inclined to give the Bureau’s database more weight than it deserves, especially if its significant shortcomings are obscured in the Bureau’s documents and websites. Other government databases, such as the airline report database, are distinct from the Bureau’s database in that they tend to offer data that are more objective, confirmable, and easily compiled (e.g., on-time arrivals, cancelled flights,) than the subjective complaint data the Bureau is releasing, (complaints based on complainants’ version of events and their interpretation of their individual contract) and address a significant deficiency of the Bureau’s database by “normalizing” the data by comparing the number of complaints to passengers or flights, for example.

Releasing the data without addressing how to normalize the data raises questions about the Bureau’s objective. The Bureau’s premature release of the data also raises questions. The Bureau admits that critical to understanding and interpreting the information in the database is its “normalization,” that is, putting it into context, for example, by comparing it to the universe of potential complaints. Yet, while it continues to ask for suggestions on how to normalize the data, it chose to release the data prematurely without this critical key -- rather than wait until it had devised a solution. Nor did it even note this significant defect in the database, press release, or other related cites to help ensure that “consumers are aware of the limitations of the data.” It now proposes to release complaint databases for a long list of other financial products with the same defect. The short 30-day public comment period for a significant expansion of this not-quite-ready-for-prime-time public resource suggests the Bureau has pre-determined its next steps and is not going to let failure to normalize deter those steps. It was one thing to launch a non-public database when it was admittedly flawed and correct it as it developed; it is another thing to knowingly take the same tact with a public database.

Congress did not intend for the Bureau to release the complaint database in this format. The Bureau's reliance on the rulemaking provisions of the Dodd-Frank Act for its authority to release the data is misplaced. As outlined in our January 30, 2012 letter, Congress made clear in Section 1013(b)(3) of the Dodd-Frank Act its specific intent with regard to the purposes and limitations of the complaint system, contemplating that it be used for consumer response, supervisory insight, and Congressional reports. The Bureau, in effect, ignores Congressional intent and strains to justify the actions by invoking general language separate from the very specific complaint system section, that is, the rulemaking section. That section (Section 1022(c)) requires the Bureau to "monitor for risks to consumers" in order to support its "rulemaking and other functions" and allows the Bureau to make public such information. The Bureau overreaches when it relies on this general rulemaking language to release complaint data when the statute very specifically and separately sets forth the authority and limitations of the complaint system under the Dodd-Frank Act Section 1034. Indeed, if Congress had intended for the Bureau to release complaint data to provide consumers with "timely and understandable information to make responsible decisions about financial transactions" and help "the credit card market to 'operate transparently and efficiently'" as the Bureau asserts, it would have granted the Bureau authority to collect complaints from all covered financial institutions, not only those the Bureau supervises. The same holds true with respect to consumer complaints about products other than credit cards.

The Bureau's authority to obtain complaints and information about covered person actions and responses related to those complaints is linked to its supervisory authority by section 1034(b) and is made available thereunder to prudential regulators for their supervisory uses. Complaint data identified by bank has been steadfastly held as privileged by all the prudential regulators as an integral part of their supervision of an institution's compliance performance as proven by the value it has for scoping exams, evaluating compliance management programs, identifying root causes and contributing to judgments about supervisory ratings. These data are still being made available to prudential regulators and being used by them for these same purposes. Yet, without any express statutory authority, the Bureau is partially disclosing this information without any apparent consent to waive supervisory privilege from the prudential regulators. Extending the disclosure of complaint data about more products will only compound this breach of protected supervisory information.

If the Bureau releases complaint data as outlined in the final Policy Statement, it must put the data into context by "normalizing" the data and highlight that information in all documents related to the database, including press releases and other public documents. While we do not believe that the government should release unreliable data that will mislead rather than enlighten consumers, as outlined in our January 30, 2012 letter, at a minimum, the Bureau must put the data into context to be informative or usable, as other government agencies it cites as precedent for releasing complaint data have done.¹⁰ The relative size or number of accounts must be compared to the number of complaints. For credit cards and other open-end credit products, the total number of transactions would have to be compared. Clearly, for all product types, mortgage, credit card, checking account, student loans, all open accounts would have to be included in any calculation. However, because the universe of complaints also includes complaints about closed accounts and accounts not opened,¹¹ the normalization process would have to reflect in some fashion those without accounts.

¹⁰ The Bureau in the Supplementary Information to its initial proposed Policy Statement relied on the Department of Transportation's office of Aviation Enforcement and Proceedings (OACP) as an example of a government agency releasing nonrandom complaint data. However, unlike the Bureau, the OACP, as the Bureau noted, reports the complaints, "expressed as incidence rates per 100,000 enplanements."

¹¹ "The Bureau also recognizes that there are cases in which no credit card number is available to the consumer, such as declined application complaints." Page 23, of the Supplementary Information to the Final Policy Statement. "It is not clear what

While we do not believe that the Bureau should release the database, if the Bureau proceeds to do so, in the interests of transparency, accuracy, and public understanding of the data, the Bureau should:

1. For the credit card database, refine the complaint categories so that disputes with merchants are excluded and identified clearly as “dispute with merchant.” Otherwise, the database misleads consumers and unfairly accuses card issuers.
2. Post no complaint data identified by institution until the complaint process has fully run its course.
3. Allow financial institutions to re-categorize the complaint. Financial institutions report that complainants often mis-characterize the type of complaint. Bureau supervision and examination will ensure that re-categorizations are reasonable.
4. Provide financial institutions a key to the complaint database with which they may verify that the information the Bureau reports is accurate and consistent with their complaint data.
5. Identify the number of complaints a single complainant has submitted to the Bureau for all products. That a single complainant routinely files complaints may skew the data and therefore be relevant in an analysis. The information will help experts and the marketplace of ideas to understand the meaning of the data better with regard to volume, zip codes, and value without any harm to the complainant who will remain unidentified.

The Bureau should limit complainants’ ability to “tag” multiple issues. The Bureau notes in the Supplementary Information to the final Policy Statement that it believes consumers should be able to “tag” a complaint as implicating more than one issue. This might provide limited additional information, but our concern is that it will artificially inflate complaints without providing meaningful information.

Even now, with a single issue identifier, financial institutions report that complainants often mischaracterize the complaint, which neither the Bureau nor the financial institution may correct. Allowing multiple “tags” will increase the inaccuracies because complainants will have less reason to be thoughtful about their selection and simply select multiple categories when unsure, even though only one applies. In addition, inaccuracies will be artificially increased, as there is a tendency for people, especially if frustrated or angry, to select multiple issues, even if inaccurate. They may also believe that tagging multiple issues will get them priority attention. Indeed, as the Bureau found in earlier stages of the complaint system, when complainants were asked whether they were subject to illegal discrimination, a large percentage responded in the affirmative, even though the complainant’s narrative and subsequent investigation provided no allegation or evidence of illegal discrimination. It appears that complainants reasoned that the complaint would be handled more quickly with such a characterization, even though inapplicable. Accordingly, the Bureau appropriately altered how it collects this information.

Allowing complainants the ability to tag multiple issues will therefore artificially and unfairly inflate the number of complaints while adding only marginal benefit, especially given the limits of the database to begin with. Therefore, if the Bureau decides to allow multiple tags, it should limit it to two. In addition, so that “consumers are aware of the limitations of the data,” it should clearly disclose in the

other complaints are included in the database do not involve open accounts, e.g., complaints regarding closed accounts and advertisements and marketing.

public database and public statements the number of complainants and the number of complaint issues, explaining why there are fewer complainants than complaint issues.

Flagging complaints not submitted in good faith. The ABA appreciates the Bureau's recognition that the complaint system may be misused by people filing complaints in bad faith and asks whether it should permit financial institutions to flag in the public database any complaint entry that the issuer reasonably believes is not submitted in good faith by or on behalf of an individual consumer." We believe that this will distort rather than clarify the data as banks are unlikely to use the option based on an expectation that examiners will second-guess them, directly or indirectly, and subject them to criticism if the percentage of flagged complaints is not at a level the examiners view as acceptable. In addition, because the decision is subjective, it will be applied and interpreted differently by different institutions, making a comparison among institutions misleading.

In the interest of consumer privacy, the Bureau should not release narratives. We reiterate our concerns expressed in our January 30, 2012 letter about releasing to narrative information the public. Based on the Bureau's discussion of public comments in its Supplementary Information to the Notice of Final Policy Statement on release of credit card complaint data, we are not convinced that the privacy issues can be adequately addressed. Even if personal identification information is redacted, as we noted in our earlier letter and other privacy groups apparently agreed, people may be identified by "non-identifiable" data, which one privacy group commented is an increasing risk. Moreover, it would be a significant challenge to also identify and redact sensitive or embarrassing information about people other than the complainants. In addition, fear of identification may inhibit people from providing complete information, delaying and making more difficult resolution.

The Bureau should re-consider releasing complaint data provided prior to June, 2012. The Bureau's announcement of the release of the credit card database, "Making consumer complaints available to the public," notes that it will be providing "additional retroactive data" later this summer. It is not clear what data it will be releasing, but we urge caution about releasing data received prior to June 2012, especially data from the early stages of the complaint data system. Otherwise the data will be even more misleading and inaccurate than the data currently released.

The Bureau announced collection of the credit card complaints on the one-year anniversary of the Dodd-Frank Act, without meaningful testing or confirmation that the Bureau's and issuers' systems were interoperable or instructions to consumers or issuers understandable and effective. The result was confusion about the process, inconsistency in interpretation of the instructions, and a significant delay in issuers receiving and resolving complaints. Duplicates, for example, were not uncommon.

Moreover, in less than one year, the Bureau has implemented three versions of its "Company Portal Manual," each with different categories, definitions, portal appearance, and complaint resolutions classifications, making meaningful comparisons and analysis virtually impossible. More importantly, the second iteration of resolution classifications, in effect until recently, as discussed in our January 30, 2012 letter, distorted the results significantly by inflating the percentage of complaints that were unresolved and coloring the interpretation of the data. It defined "closed with relief" as "objective, measurable, and verifiable monetary value" and required issuers to describe any relief and enter the dollar amount of that relief. However, monetary relief is not appropriate nor sought for many of the 32 types of complaints' listed in the Bureau's reports, such as those about advertisements and marketing, customer service, privacy, rewards, application processing delays, credit line increases or decrease, forbearance, payoff process, sale of account credit determinations, etc.. Yet, even if resolved to the complainant's satisfaction, the complaint was classified as "no relief." Even if the Bureau lists the conditions and limitations of the definitions, as we have already seen, they will be overlooked or ignored

when reported. Again, release of this clearly distorted, misleading information is not consistent with the Bureau's claim to be "data-driven" nor its mission to provide consumers "with timely and understandable information to make responsible decisions about financial transactions."

The Freedom of Information Act list shows consumer complaints filed prior to the Bureau officially taking responsibility for those complaints. For example, there are 842 mortgage complaints on the lists that were received prior to December 1, 2011 when the Bureau began to take mortgage complaints. They should be removed, given the potential for additional confusion and inaccuracies.

The Bureau should permit more time to resolve mortgage complaints before posting. Under the June 1, 2012 version of the Bureau's "Company portal manual" if a financial institution cannot close a complaint within 60 calendar days, the status of the complaint is changed to "No response," though the Bureau states that it recognizes that some complaints may require more than 60 calendar days to close. Our understanding is that if, for example, a mortgage modification request is not closed within 60 days, the status of the complaint is altered to "No response." This would appear to give an unfair advantage to those seeking a mortgage modification through the Bureau over those who choose to deal with the lender directly, because modification requests from the Bureau would likely go "to the head of the line," at the expense and delay of those who perhaps had filed a request earlier. As we have already urged, no provider-identified complaint should be disclosed until the complaint process has run its course. Modifications are complex and in a period of high volume of requests simply may not be resolvable within 60 calendar days.

The Bureau should continue to improve its process to identify and eliminate duplicates. While the Bureau has improved its controls to identify and eliminate duplicates, credit card issuers report that they remain. The Bureau should continue to work with the financial institutions to further eliminate so as not to inflate the number of complaints, especially as the number of complaints is so relatively small compared with the number of accounts and consumers.

Conclusion. ABA thanks the Bureau for the opportunity to comment on this important issue and hopes that the Bureau will reconsider release of the data given its potential to mislead consumers, contrary to the Bureau's mission to help consumers "with timely and understandable information to make responsible decisions about financial transactions" and inconsistent with its own commitment to be "data-driven. Moreover, its confidence that the "marketplace of ideas" will overcome the significant and admitted flaws of the database is misplaced, especially as the Bureau has failed to normalize that data and its own public documents fail adequately to alert the public that the data have not been verified as accurate and are therefore unreliable. We also challenge the Bureau's statutory authority to release the data in provider-identified form and its compromise of protections afforded by the long-standing supervisory privileges. We will continue to work with the Bureau on this important matter.

Regards



Nessa Eileen Feddis