

September 30, 2016

Bureau of Consumer Financial Protection
Paperwork Reduction Act (PRA) Office
1700 G Street NW
Washington, D.C. 20552

RE: Comment Request on the Proposed “Consumer Response Company
Response Survey”
Docket No. CFPB-2016-0041;
OMB Control Number: 3170-00NEW

Dear PRA Office Representative:

The Consumer Bankers Association (CBA)¹ and American Bankers Association (ABA)² appreciate the opportunity to comment on the Bureau of Consumer Financial Protection’s (Bureau) proposed information collection titled, “Consumer Response Company Response Survey”³ (Proposed Survey).

As we have discussed at length in prior comment letters,⁴ we oppose the Bureau’s decision to publish on its website complaint data and select consumer narratives because doing so:

1. erodes customer privacy;
2. impairs the confidential nature of the exchange between customer and banker;

¹ Founded in 1919, the Consumer Bankers Association (CBA) is the trade association for today’s leaders in retail banking - banking services geared toward consumers and small businesses. The nation’s largest financial institutions, as well as many regional banks, are CBA corporate members, collectively holding well over half of the industry’s total assets. CBA’s mission is to preserve and promote the retail banking industry as it strives to fulfill the financial needs of the American consumer and small business.

² The American Bankers Association (ABA) is the voice of the nation’s \$16 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$11 trillion in deposits and extend more than \$8 trillion in loans.

³ CFPB Comment Request “Consumer Response Company Response Survey” 81 FR 50484 (August 1, 2016). Available at <https://www.federalregister.gov/documents/2016/08/01/2016-18128/agency-information-collection-activities-comment-request>

⁴ See Letter from Jonathan Thessin, Senior Counsel, Am. Bankers Ass’n, to Monica Jackson, Bureau of Consumer Fin. Prot., 3-4 (Aug. 31, 2015), available at <http://www.aba.com/Advocacy/commentletters/Documents/cl-ConsumerComplaintDB-Aug2015.pdf>; Letter from Frank Keating, President and CEO, Am. Bankers Ass’n, to Richard Cordray, Dir., Bureau of Consumer Fin. Prot., 15-16 (Sept. 22, 2014) (ABA 2014 Letter), available at <http://www.aba.com/Advocacy/commentletters/Documents/clComplaintNarrative2014Sept.pdf>; Letter from Frank Keating, President and CEO, Am. Bankers Ass’n, to Richard Cordray, Dir., Bureau of Consumer Fin. Prot. (Apr. 8, 2015), available at <http://www.aba.com/Advocacy/commentletters/Documents/cl-KeatingLetter-ConsumerNarratives2015.pdf>.

3. compromises the supervisory process; and
4. puts into the public under a governmental seal unreliable information that can be misleading to financial consumers.

Instead of fostering informed and responsible consumer choice, the Bureau has become a purveyor of at best unverified, and potentially false, information. The proposed information collection will result in the publication of additional unverified information, furthering the dissemination of unreliable and potentially false information into the market. Instead of working to improve the accuracy, integrity, and usefulness of the information reported on the Consumer Complaint Database (Database), the Bureau has focused its energies, including through this information collection, on expanding the amount of unverified information published in the Database.

We urge the Bureau to refrain from implementing the proposed modification to the Database because the subjective rating system will form the basis for inaccurate conclusions in the public arena with minimal benefit and potential harm to consumers. As we have asserted previously, we believe the Bureau should refrain from expanding the Database until further review is conducted on the Database's utility to consumers and risks to consumer privacy. For the reasons discussed below, we ask the Bureau to reconsider establishing a rating system and, instead, conduct a review of the utility of the Database and the adequacy of the standards used to "scrub" personally identifiable information (PII) from the published complaints.

I. The Bureau has proposed yet another expansion to the Database.

On August 1, 2016, the Bureau published the Proposed Survey to replace the function on the Database that allows a customer to dispute the company's response to the complaint with a "short survey" that would allow the customer to provide feedback on the company's handling of the complaint. Through the Proposed Survey, a customer would have the opportunity to state, using a one- to five-point scale, whether it agreed or disagreed with the following three statements regarding the company's response to, and handling of, his complaint:

- "The company addressed all of my issues."
- "I understood the company's response."
- "The company did what it said it would do."

The customer would also be given the opportunity to provide a narrative description to explain the rating. According to the Bureau's notice, the customer's rating and description would be eligible for publication in the Database, consistent with the Bureau's rules for publication of consumer-provided information. If the collection request is approved, the Bureau anticipates implementing this revised feedback process in early 2017.

II. Our members are committed to providing customers with superior customer service.

Banking is a service industry. If customers are not happy with the service they receive, our members want to hear about it and understand how they can make things right. Hearing from customers also allows our members to identify areas of improvement in the institution. Without feedback, our members do not know how to improve or grow to succeed.

Good customer service is good business. There are currently 6,058 banks in the United States,⁵ and about 6,000 credit unions and non-bank financial services providers (including the emerging fintech companies). With such immense competition, institutions must be dedicated to customer service or their customers will go elsewhere. Our members are committed to providing our customers with the highest caliber service and are devoted to responding to customer complaints even in the absence of the Database. Not only do our members want to make customers happy, they also have an incentive to do so.

III. Subjective ratings are unlikely to provide benefit to consumers.

We do not believe consumers will benefit from a highly subjective rating system. The Proposed Survey is subjective in two distinct ways (in addition to offering choices that are simplistic and devoid of the nuance and variation that characterize each financial business relationship): (1) the pool of customers who take the time to respond will likely be those who are most dissatisfied with the company's handling of their complaint, and (2) no criteria have been established to guide a respondent in making a selection under the Proposed Survey's one-to-five scale.

First, we expect the customers who respond to the Proposed Survey will likely be those who are most dissatisfied with the company's handling of their complaint. Often, people who take the time to respond to a survey or post a review had a particularly good experience or a particularly bad one. While the Bureau asserts the Proposed Survey will provide the opportunity for the Database to reflect positive feedback, we assert it is much more likely that the people who were dissatisfied with the company's response to their complaint or those who did not receive the relief they thought they were due will take the opportunity to voice their concerns. Customers who submit a complaint are dissatisfied already with the company, and we think it is unlikely that the company's response will meaningfully alter their opinion of the company or improve the customer's perception from the circumstances contributing to the complaint. Typically, people are not excited to receive an outcome they expected in the first place, and in turn, will not take the time to speak positively of the company's resolution. As a result, any additional feedback the consumer provides likely will be based on the underlying complaint, and not on the company's efforts to resolve that complaint.

Second, the rating system is flawed because no standard has been proposed to assign a meaning to a "1", "5", or other rating on the five-point scale. Customers have very different ways of assigning value. Some customers give five stars if their expectations were met, while others only

⁵ FDIC Quarterly Banking Profile TABLE I-A. Selected Indicators, FDIC-Insured Institutions. *Available at* <https://www.fdic.gov/bank/analytical/qbp/2016jun/all1a.html>

give that value if they receive service that exceeded their expectations. Here, the Proposed Survey will be used in the public domain to tell stories and create narratives for institutions despite the lack of objectivity. These stories lead to public perceptions that we believe mislead the public to form a negative view that is not supported by evidence. Nevertheless, these are the same institutions providing access to credit to consumers looking to buy a house, offering financial education and tools to those looking to create a budget, and investing in communities, particularly low and moderate income areas. Every day, our members are working hard to improve the financial lives of their customers. We think that story is the most important.

Without a description of the circumstances under which a particular value should be given, the ratings will reflect the idiosyncrasies of customers, not an accurate reflection of the company's response to complaints it received. As constructed, we believe the aggregate results of these ratings will provide little, if any, benefit to consumers.

The inclusion of the narrative box will only perpetuate the broader problems presented by the Database's inclusion of unverified narratives. Unfounded allegations against an institution create potential reputational harm to the banks and mislead consumers if the complaints are used publicly. For example, one member institution recounted a complaint it received recently that made unfounded criminal accusations against the bank and one of its employees, even though the customer's misunderstanding resulted from a mandated hold of funds the bank was required to perform by law. Our institutions take accusations of legal and criminal action very seriously, especially when concerning our employees, and we believe unsupported, inflammatory accusations have no place in the public domain.

IV. The Bureau should demonstrate the utility provided by the Database before expending additional time and taxpayer resources on modifications.

The Bureau has never conducted a study to show how the complaints are informing their work or if the information is providing benefit to consumers, despite investing significant resources in the Office of Consumer Response (Consumer Response), which is dedicated to managing and operating the Database. When the Database was established, the only product type collected was credit cards. Now, the Bureau collects complaints on fourteen different products and services.⁶ Additionally, the Bureau started publishing narratives and issuing monthly reports.

With this continued expansion, we urge the Bureau to pause to conduct a cost benefit analysis evaluating customer experience to date with the Database's overall costs to taxpayers and companies, and risks to customer privacy, and whether the benefit to consumers, if shown, outweighs those costs. Specifically, the Bureau should examine if consumers use the Database as a shopping tool or in any other way other than lodging a complaint. The Bureau should also study if customers have received more prompt feedback or more favorable resolution to their complaints than had they submitted the complaints directly to the financial institution. In

⁶ Credit cards (July 21, 2011); to mortgages (December 1, 2011); to bank accounts and services, private student loans, and consumer loans (March 1, 2012); credit reporting (October 22, 2012); money transfers (April 4, 2013); debt collection (July 10, 2013); payday loans (November 6, 2013); prepaid cards, credit repair, debt settlement, and pawn and title loans (July 19, 2014); virtual currency (August 11, 2014); and marketplace lenders (March 7, 2016).

addition to justifying the resource investment, the Bureau should evaluate whether the additional products and fields have made the Database more confusing and less user-friendly. We pose these questions because the unwieldy Database seems difficult to use to comparison shop.

We appreciate the improvements made by Consumer Response,⁷ demonstrating a willingness to address problems. So far, these modifications have been predominantly operational changes to the Company Portal—which only the company can view—not to the public facing Database. We urge the Bureau to assess the costs and benefits provided by the information made available through the Database. Based on the conclusion, we respectfully ask the Bureau to make substantive and structural revisions – not only operational ones – to the Database.

With respect to the Proposed Survey, we urge the Bureau to consider:

1. if a subjective rating of certain institutions will actually help consumers;
2. if there are privacy considerations presented by the inclusion of a narrative box; and
3. whether consumers will have expectations for an additional company response after completing the survey.

Indeed, the Bureau acknowledged that the Database, in its current form, provides less-than-optimal value, by releasing a Request for Information (RFI), seeking “feedback on best practices for ‘normalizing’ the raw complaint data it makes available via the [Consumer Complaint] Database so they are easier for the public to use and understand.”⁸

As currently designed, the Database misleads consumers into relying on customer-submitted information that consumers believe presents an accurate portrayal of a company’s efforts to address customer concerns but, in fact, is based on unverified complaints submitted by a self-selecting group of customers. A subjective rating system will only further the publication of unverifiable information.

V. The narrative option puts consumer privacy at risk.

The proposed narrative option should be omitted to prevent the disclosure of confidential information. As we have previously discussed with the Bureau, we are concerned about the risks to consumer privacy presented by the release of narratives to the public.⁹ When the Bureau initially proposed publishing complaint narratives, we urged them to reconsider and argued “while a consumer’s name and address could be scrubbed from a narrative, reference to his or

⁷ The changes made by Consumer Response consist of improving the definition of a duplicate complaint, inserting disclosures to the monthly reports, and better enabling companies to compare the complaints shown through each company’s non-public portal with the public facing Database.

⁸ CFPB Request for Information Regarding the Consumer Complaint Database: Data Normalization, Docket No: CFPB-2015-0030, pg. 1.

⁹ See Letter from David Pommerehn, Senior Counsel, Consumer Bankers Ass’n, to Monica Jackson, Bureau of Consumer Fin. Prot. 5 (Sept. 22, 2014) (CBA Letter), available at <http://www.consumerbankers.com/sites/default/files/2014-09-22%20Proposal%20to%20Disclose%20Consumer%20Complaint%20Narratives.pdf>; see also ABA 2014 Letter, *supra* note 4, at 29.

her profession, location and other specific, un-redacted information could be used to re-identify the person.”¹⁰ If just one percent of the approximately one million complaints currently logged in the Database were re-identified and used for nefarious purposes, thousands of Americans would be put at risk of severe harm. This underscores the importance of undertaking a cost benefit analysis that includes the assessment of the privacy risks presented by the Database.

Not only do the narratives create privacy risks, but potential inclusions of documents or attachments would further subject consumers to possible harm. The narrative box includes a 1,000-character limit and does not expressly preclude customers from attaching documents. Consequently, the customer could attach the company’s response to the customer’s initial complaint. As noted in our comments to the proposal to publish consumer complaint narratives, to explain fully to the consumer the bank’s resolution of an issue, written responses generally must reference and attach contracts, account statements, transaction histories, or previous communications between the customer and the bank. To protect the privacy of customers and bank employees and to preserve confidential business information, the vast majority of companies choose not to respond publically to consumer complaints. Instead, they respond by selecting one of the Database’s standardized responses. Permitting consumers to fill the narrative box with potentially confidential information provides consumers with the opportunity to override those decisions to the detriment of consumer and bank privacy.

For all of these reasons, we ask the Bureau not to include a narrative function, regardless of whether the Bureau goes forward with the rating system.

VI. The rating system and narrative option create an unending complaint loop.

The proposed narrative and rating system add another layer to complaint management by potentially creating an unending complaint cycle. As earlier stated, our members are committed to customer service and have robust complaint response departments dedicated to responding to complaints. Not only are our members handling complaints in the Bureau’s Database, but they also have their own complaint databases that filter in from all areas of the bank. If a customer complains in a bank branch or on the telephone, the complaint ends up at a central complaint office.

If an institution receives a poor rating or narrative indicating the customer’s dissatisfaction, the institution may feel compelled to respond to the customer even if the bank previously closed the complaint with an appropriate response. While institutions are not required to respond to comments submitted through the Proposed Survey, customers are likely to expect a response and become frustrated if the institution does not contact them, even after the matter had been addressed.

This Proposed Survey creates unrealistic expectations that the company will provide an additional response and may set in motion a potentially never ending cycle of complaint and response. To avoid creating these expectations, the Bureau should state clearly that the narrative option may not be used to re-open the underlying complaint. Further, the Bureau should add a

¹⁰ CBA Letter, *supra* note 9, at 5.

disclosure stating that the company will not respond because the complaint is closed in its system and, if the customer has an additional complaint, he should file a new one or contact the institution directly.

VII. The Proposed Survey should be issued as part of a formal rulemaking.

The Proposed Survey continues the Bureau’s troubling trend of skirting the formal rulemaking process despite the binding effect that the Database has on companies and the policymaking role played by the information generated by the Database. We urge that the Bureau not proceed further with the Proposed Survey unless it does so through a formal Administrative Procedure Act (APA) rulemaking process, rather than as an information collection request under a PRA notice.

Beginning with the Bureau’s initial proposal to establish the Database, the Bureau has asserted that it is acting pursuant to a “policy statement,” which is, therefore, exempt from the notice and comment rulemaking procedures of APA § 553(b). It is well established that a statement of policy that has a “binding effect” is a legislative rule subject to notice and comment. Because the Bureau requires entities subject to its supervisory jurisdiction to receive consumer complaints through the Consumer Response Portal, the policy statement has binding effect. Any substantive change made to the Database that an entity is required to adhere to—such as the proposed changes to the complaint closing process—has binding effect.

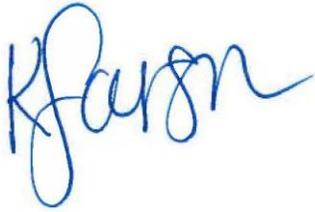
Moreover, the Database plays a policymaking role for the Bureau, according to the Bureau’s own words. The Bureau acknowledges on its website, “[w]e analyze complaint data to help with our work to supervise companies, enforce federal consumer financial laws, and write better rules and regulations.”¹¹ While the Bureau asserts the Proposed Survey is merely a data collection, the information the Bureau collects through the modified process, and Database more broadly, will clearly influence the Bureau’s policies, and any changes should be effected through a formal rulemaking.

VIII. We hope the Bureau will reconsider its proposal.

The Proposed Survey will not benefit consumers and will perpetuate the dissemination of misleading information, while providing another avenue for the potential inadvertent disclosure of information that is confidential to the customer or company. Moreover, the Proposed Survey reflects the Bureau’s continued expenditure of time and resources on a Database whose value to consumers has never been demonstrated. We urge the Bureau not to implement this change and instead to pause and conduct a cost benefit analysis evaluating experience to date regarding the Database’s risks and value to consumers. We look forward to the opportunity to work with the Bureau to make needed changes to the Database to ensure it conveys accurate information that benefits consumers.

¹¹ Bureau of Consumer Fin. Prot., *How We Use Complaint Data*, <http://www.consumerfinance.gov/complaint/data-use/> (last visited Sept. 28, 2016).

Sincerely,

A handwritten signature in blue ink that reads "Kate Larson". The signature is fluid and cursive, with the first name "Kate" and last name "Larson" clearly distinguishable.

Kate Larson
Regulatory Counsel
Consumer Bankers Association

A handwritten signature in black ink that reads "Jonathan Thessin". The signature is cursive and elegant, with the first name "Jonathan" and last name "Thessin" clearly distinguishable.

Jonathan Thessin
Senior Counsel, Center for Regulatory Compliance
American Bankers Association