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Via electronic submission

June 4, 2018

The Honorable J. Michael Mulvaney
Acting Director
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

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

Dear Acting Director Mulvaney:

The Independent Community Bankers of America (“ICBA”)¹ welcomes this opportunity to provide comment on the Bureau of Consumer Financial Protection’s (“BCFP” or “Bureau”) request for information (“RFI”) regarding its public reporting practices of consumer complaint information, including its Consumer Complaint Database (“Complaint Database” or “Database”).

Community banks strive to provide superior service in meeting their customers’ financial services needs. Community banks recognize that their success is linked to the overall satisfaction of their customer base. It befits community banks to excel in serving their customers and quickly resolving situations when customers’ expectations are not met. Community banks work with the customer to resolve those difficulties.

Occasionally there are times when a consumer believes that a bank’s attempt at resolution falls short and the consumer will submit the complaint to the Bureau. While the collection of those complaints is part of the Bureau’s statutory mandate, current Bureau practice exceeds that

¹ The Independent Community Bankers of America®, the nation’s voice for nearly 5,700 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services. With nearly 52,000 locations nationwide, community banks employ 760,000 Americans, hold \$4.9 trillion in assets, \$3.9 trillion in deposits, and \$3.3 trillion in loans to consumers, small businesses, and the agricultural community. For more information, visit ICBA’s website at www.icba.org.

authority by publishing those individual complaints on a public facing website. ICBA is pleased that the Bureau is now reevaluating this practice.

Background

When a consumer has a less than satisfactory experience with a financial institution, a consumer can file a complaint with the BCFP. Consumers can access the BCFP's website and complete a series of questions and data fields to file a complaint.² Complaints about depository institutions with less than \$10 billion in assets are not processed by the Bureau but referred to the institution's primary federal regulator.

Screened complaints are then forwarded to the company named in the complaint. Companies have 15 calendar days to provide an initial response to the complaint. The company is able to communicate with the customer and determine what action to take in response, having up to 60 days to provide a final response. The Bureau then invites the consumer to review the response and provide feedback.

Information about individual consumer complaints is published in the Bureau's public Database. The BCFP asserts that it makes the Database publicly available to provide timely and understandable information and to improve the functioning of the market.³ Under this current RFI, the Bureau seeks comment on whether this Database should continue to be made public.

Executive Summary

While the Bureau is statutorily mandated to collect, investigate and respond to consumer complaints, it is not mandated to publish those individual complaints for public consumption. Such practice is ripe for creating irreparable harm due to erroneous complaints or misunderstanding due to limited information. ICBA strongly urges the Bureau to cease its practice of publishing the Complaint Database for the reasons noted below.

- The Bureau is exceeding its statutory authority by publishing the Database.
- Publication ignores reputational risk for banks.
- Unverified and insufficient data exacerbates problems associated with public dissemination.
- Publication of disaggregated data results in misleading comparisons.
- Regulators are in the best position to interpret and use disaggregated data.
- Banks already strive to resolve consumer complaints.

² See "So, how do I submit a complaint?" available at <https://www.consumerfinance.gov/about-us/blog/so-how-do-i-submit-a-complaint/>, providing consumers with information about the complaint process and instructions on how to file a complaint.

³ 80 Fed Reg 15572 (March 24, 2015).

- Information drawn from the Database’s publication poses a threat to consumers’ privacy.

ICBA Comments

BCFP is Statutorily Limited from Publishing Disaggregated Complaint Data

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank” or “Act”), one of the Bureau’s primary functions is the collection, investigation, and response to consumer complaints.⁴ Dodd-Frank clearly sets the limits and manner in which the Bureau may collect and disseminate this information.

Section 1013(b)(3) of the Act authorizes the establishment of a unit “whose functions shall include establishing a single, toll-free telephone number, a Web site, and a database or utilizing an existing database to facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or services.” Section 1034(a) directs the Bureau to establish “reasonable procedures to provide a timely response to consumers, in writing where appropriate, to complaints against, or inquiries concerning, a covered person.

Finally, section 1034(b) provides that “[a] covered person subject to supervision and primary enforcement by the Bureau pursuant to section 1025 shall provide a timely response, in writing where appropriate, to the Bureau, the prudential regulators, and any other agency having jurisdiction over such covered person concerning a consumer complaint or inquiry.” Most notably, though, the Act **does not** provide authority for the Bureau to publish individual, disaggregated complaints.

Previous Bureau leadership argued that Dodd-Frank’s provisions set out requirements and conditions for specific methods of disclosure and responses, but that it does not limit the Bureau’s authority to disclose consumer complaint information in other ways, despite clear statutory language to the contrary.⁵

The Bureau has also argued that the publication of the Database is reasonably encompassed within the Bureau’s authorities, especially in light of the Bureau’s other statutory objectives and functions, including promoting financial education, providing timely information, and ensuring that markets operate transparently.⁶

⁴ 12 U.S.C. §5511(c)(2).

⁵ 80 Fed. Reg. 15572, 15575 (March 24, 2015).

⁶ *Id.*

According to the Bureau’s logic, it can pursue any act or use any authority so long as Congress did not explicitly prohibit or speak to the practice employed by the Bureau. This argument is concerning.

The publication of the Database is not necessary, nor is it a logical outgrowth for achieving the statutory mandates discussed above. There is a myriad of ways to achieve these statutory goals more directly than through the publication of individual consumer complaints.

For these reasons, ICBA urges the Bureau to curb the continued publication of disaggregated complaints, as Congress intended.

Bureau’s Publication of Disaggregated Data Ignores Bank Reputation Risk

Publication of unverified consumer complaints and narratives poses an unwarranted reputational risk to banks. The Bureau even acknowledged that banks could incur intangible reputational damage resulting from the publication of complaints. Nevertheless, the Bureau dismissed those concerns, noting that “while there is always a risk that market participants will draw erroneous conclusions from available data, the marketplace of ideas would on the whole be able to determine what the data show and their relative importance.”⁷

A federal agency should not rely on a “marketplace of ideas” to mitigate the harms that may come from a platform that facilitates reputational damage. The Bureau, not a marketplace of ideas, has the responsibility to mitigate such harm.

Publication Exacerbates Problems Stemming from Unverified and Insufficient Data

Beyond the statutory concerns discussed above, ICBA is distressed by the Bureau’s publication of unverified or inaccurate information which may mislead consumers. Given the complexities of financial services, most consumers unknowingly interact with multiple entities when engaging in a financial transaction. If the consumer has an unsatisfactory experience, the consumer may misidentify his or her bank as the cause of this experience.

A simplified example would include an instance when a consumer files a complaint against his or her bank due to a problem with their mortgage payments but the complaint would be more correctly lodged against the mortgage servicer. Similarly, the consumer could identify a

⁷ 80 Fed. Reg. 15572, 15581 (March 24, 2015).

complaint as being associated with a debt collector but identify the bank which no longer owns the debt being collected.

In addition to complaints being lodged against the wrong covered person or firm, complaint data is often incomplete or too vague for the bank to accurately identify the bank customer, or even whether the consumer is a customer of the bank. Additional mandatory data fields would help address this issue. To eliminate or reduce erroneous data, the complaint form should include more mandatory fields for the consumer to fill-in. ICBA will address this issue and provide further comment in response to the Bureau's RFI regarding the consumer complaint and consumer inquiring handling processes.⁸

Publication of Disaggregated Data Results in Misleading Comparisons

Using the Database to compare different banks would unfairly prejudice banks in certain areas which might have a consumer base that is more likely to experience problems. For example, banks in one part of a state might process a higher number of remittances than banks in a different part of the state.

Transaction volumes also influence the Database's context. As the number of remittances increase, so do the odds that a customer has a complaint about a remittance. Yet without context, a bank with a large absolute number of complaints about remittances could actually have a much lower percentage of dissatisfied customers as compared to a bank that processes very few remittances. The current publication of the Complaint Database does not provide the total context and is misleading, at best.

Regulators Use the Complaint Database as One of Many Tools

In addition to collecting consumer complaints, the Bureau is statutorily required to share the complaints with the prudential regulators.⁹ Clearly it is important for bank regulators to determine whether there is a pattern of problems, to assess whether a bank adequately responds to consumer complaints, or to determine if the bank has flaws in its compliance management.

The prudential regulators reference the Database during their routine examinations, reviewing the bank's consumer complaints as well as the process for handling those complaints.¹⁰ The regulators are able to review the Complaint Database in the overall context of their knowledge

⁸ Request for Information Regarding the Bureau's Consumer Complaint and Consumer Inquiry Handling Processes, Docket No CFPB-2018-0014.

⁹ 12 U.S.C. § 5493 (b).

¹⁰ See Office of Comptroller of the Currency's Handbook, "Compliance Management System," page 6, available at <https://www.occ.treas.gov/publications/publications-by-type/comptrollers-handbook/compliance-mgmt-system/pub-ch-compliance-management-system.pdf>.

of the bank's operations. Rather than having the limited knowledge of the general public and analyzing the Complaint Database in isolation, examiners use the Database as a tool to gain a better understanding of the bank and home in on whether further review is necessary.

The Database is just one set of tools that a regulator uses to assess the overall picture of a bank. Without the knowledge and familiarity that regulators have with banks, the general public is unable to ascertain the whole landscape and can easily draw misinformed conclusions. Unfortunately, the Bureau's current practice of publishing disaggregated data misuses this important tool.

Rather than using the Database as a tool to assess potential problems, the Bureau could have other motivations for complaint publication. Previous Bureau leadership made public comments suggesting that the publication of complaint data was in pursuit of garnering public goodwill and support.¹¹

The Database should be used by Bureau and prudential examiners to help illuminate potential problem areas or systemic deficiencies. It should not be weaponized as a way to publicly shame banks and other covered persons.

Banks Already Strive to Resolve Consumer Complaints

While community banks generally provide the most personalized, high-touch financial services for consumers, situations do arise where a consumer is not satisfied with a bank's service. In such situations, community banks welcome feedback to work with the customer to resolve any difficulty or problem. Often, a complaint submitted directly to a bank will provide a consumer with a much speedier resolution than if the complaint was submitted through the Bureau's complaint portal.

To prioritize customers and their satisfaction, ICBA recommends that the Bureau stress in communications to consumers that resolution should first be sought directly from the bank before submitting a complaint through the Bureau's portal. Consumer complaints can usually be handled and resolved the same day that a customer approaches the bank with a problem. Community banks strive to resolve the matter quickly and satisfactorily.

In contrast, the Database is not the most efficient way to resolve consumer complaints or problems. Publishing complaints could create disincentives for consumers to first contact their

¹¹ Prepared Remarks of CFPB Director Richard Cordray at the National Association of State Treasurers, March 18, 2014, available at <https://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-the-national-association-of-state-treasurers/>; see also, Michael Calabresi, "The Agency That's Got Your Back," TIME, Aug 13, 2015, available at <http://time.com/3995779/the-agency-thats-got-your-back/>, (subscription required), stating, "the bureau is literally shaming banks into compliance."

banks before submitting a complaint to the Bureau. Often, legitimate complaints can be more quickly addressed and easily remedied by contacting the bank.

Consumer advocacy groups have written in support of publication of complaint data. In part, they argue that the publication allows others to assist the Bureau in detecting destructive patterns before they do extensive damage. While publication of disaggregated complaints could certainly aid in this effort, the publication of aggregated complaints would achieve the same aim without the harm inflicted by inaccurate and unsubstantiated complaints. Taken as a whole, the Database of complaints is still a valuable resource for the Bureau, even without its publication.

The Bureau Should Address Data Security Concerns

Although the Bureau asserts that consumer consent and “opt-in” provisions addresses privacy concerns,¹² ICBA stresses to the Bureau that decentralized pieces of data can be combined with other public and non-public data to identify consumers that have submitted complaints. Protection of private information must be a primary goal for the Bureau. ICBA is of the opinion that the potential benefit is not worth risk of violations of privacy.

Conclusion

Although community banks aim to please their customers in every interaction, the reality is that sometimes there are genuine instances in which banks fall short in their service. While the Bureau is statutorily mandated to collect and monitor complaints that arise from those instances, a whole host of problems arise when it publicly disseminates disaggregated complaints.

¹² 80 Fed. Reg. 15572, 15580 (March 24, 2015).

For all of the reasons stated above, ICBA respectfully urges the Bureau of Consumer Financial Protection to cease publishing the individual complaints logged in its Database. Should you have any questions or would like to discuss anything further, please do not hesitate to contact me at michael.emancipator@icba.org or at 202-659-8111.

Sincerely,

/s/

Michael Emancipator
Assistant Vice President and Regulatory Counsel