



July 19, 2012

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

**Re: Disclosure of Consumer Complaint Data (Docket No. CFPB-2012-0023)**

Dear Ms. Jackson:

The American Financial Services Association (“AFSA”) welcomes the opportunity to comment on the Consumer Financial Protection Bureau’s (“CFPB”) proposed policy statement (“Proposed Policy Statement”) regarding the CFPB’s disclosure of data from consumer complaints about financial products and services other than credit cards. We understand that the Proposed Policy Statement duplicates the final policy statement (“Final Policy Statement”) that describes the CFPB’s credit card complaint data disclosure policy.

AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its 350 members include consumer and commercial finance companies, auto finance/leasing companies, mortgage lenders, mortgage servicers, credit card issuers, industrial banks and industry suppliers.

## **I. Introduction**

The problem with simply collecting consumer complaints and publicly publishing the complaints is that, unless verified and validated, they can be accurate and informative, false, misleading, or filed concerning the wrong company. And publicly publishing such complaints can and will injure companies subjected to such complaints. AFSA therefore believes that the CFPB must resolve the problems with the collection of consumer complaints, the verification and validation<sup>1</sup> of complaints, and the release of complaint data before disclosing to the public data from consumer complaints about financial products and services other than credit cards. We understand that the CFPB has requested only comments that are specific to the proposed extension of the policy for one or more new product areas, as stated in the Proposed Policy Statement. However, in order to comment on the extension of the Final Policy Statement, we must comment on the Statement itself.

Moreover, in the Final Policy Statement, the CFPB writes that it “has and will continue to refine and improve its Complaint System over time.” Also, the CFPB notes, it “plans to study the effectiveness of its policy on an ongoing basis, and plans to continue to engage with the public,

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<sup>1</sup> “Verification” is the process of confirming that the complaint originated from an actual consumer with standing to complain. “Validation” is the process of determining whether the complaint has merit. Prior to any release to the public it is imperative that a complaint be **both** verified and validated.

including regulated entities, as it assesses the efficacy of its complaint disclosure policy.” Thus, we will take this opportunity to respond to some of the issues the CFPB raises in the Final Policy Statement.

## **II. Problems with Current Data Collection, Verification, and Release**

There are several serious problems with the collection, verification, validation and release of consumer complaints. We ask that the CFPB work to resolve these problems before disclosing additional consumer complaint data.

### *A. Collection of Consumer Complaints*

The Final Policy Statement notes that the CFPB does not plan to disclose discrimination field data in the public database at this time, and AFSA supports this position. Nevertheless, we maintain that the CFPB should remove the discrimination field from the Consumer Complaint System altogether. The value of collecting such information is not evident, and the data it produces is not meaningful. Discrimination made on a prohibited basis is serious, and there is no reason to believe that anyone victimized by such behavior needs to be prompted to complain about it, or would fail to describe it in the box provided for supplying detailed information.

### *B. Verification of Consumer Complaints*

The procedure the CFPB uses to verify complaints is insufficient. Complaints that are entered incorrectly are not corrected. Complaints may not be matched to the correct financial services company. There is no effort to eliminate frivolous complaints or to verify that a complaint submitted by a consumer’s representative was actually authorized by the consumer. It is unclear if duplicate complaints are actually being removed from the database. All of these problems result in serious harm to financial services companies.

AFSA members have observed that many consumers enter complaints into the system incorrectly. For example, the customer may make a complaint about a debit card in the credit card section. More specifically, a consumer may make a complaint about a closure request, disputed chargeback resolution, do-not-solicit request, minimum payment, etc., under the “Advertising and Marketing” category. Under the “APR or Interest Rate” category, AFSA members have seen debt validation requests and financial hardship, which should be under the “Collection Practices” category. Consumers are also using the “APR or Interest Rate” category for balance transfer and cash advance issues, even though there are separate categories for each of those issues. In addition, consumers are sometimes choosing the “Credit Card Payment/Debt Protection” category for a miscoded payment issue. There are also collections issues being filed under the “APR and Billing Disputes” category. Another example of complaint categories being incorrectly chosen is an attorney who is filing multiple complaints on behalf of his clients regarding merchant disputes against companies claiming they have buyers for the consumer’s time shares under the “Identity Theft” category. These complaints should actually be filed under “Billing Disputes.” Since there are a large volume of complaints from this attorney, it makes it seem as though the issuer has a large number of identity theft complaints. These mistakes are not corrected or correctable by the company in the database.

The CFPB claims in the Final Policy Statement that “system controls are in place to verify that a complaint is from a cardholder and that the issuer is properly identified.” However, it appears that the CFPB is having difficulty matching complaints to the correct financial services company. The complaints that the CFPB provided to reporters in June in advance of public release of the CFPB complaints database show several thousand complaints as “pending company match,” meaning that a financial services company has not yet been identified. Many of these complaints date back to last year. This seems to indicate that it is not necessarily easy, or even possible, to match the complaint to the company.

Where CFPB has matched complaints to a financial institution, the match may be misleading. For example, where Financial Services Company A has acquired Financial Services Company B or a subset of B’s assets, CFPB is treating all complaints against B – even those prior to the acquisition of B – as belonging to A. This would unfairly inflate any tally of complaints against A.

### *C. Validation of Consumer Complaints*

Even if the “complaint” is from the consumer and is matched with the correct financial services company, it could still be a frivolous complaint. For example, a consumer could complain that she does not like the actor in a financial services company’s ad campaign. Another example is when a mortgage lender is identified in a complaint, but the complaint is actually about a problem that the lender has no control over, such as an appraisal. In addition, complaints may really be grievances about hardships or difficult circumstances.

Furthermore, AFSA is concerned that the system runs the risk of being inundated with “complaints” from credit repair organizations, debt settlement companies, advocacy groups, competitors, and even blog sites dedicated to airing gripes about specific companies, similar to the rash of frivolous “disputes” that have been filed with consumer reporting agencies by unscrupulous credit repair organizations and debt settlement companies. In fact, there is a law firm in Florida that is advertising nationally and submitting numerous erroneous complaints. The CFPB claims to be checking to ensure that each complaint is submitted by the identified consumer or from his or her specifically authorized representative, but without published procedures as to how the CFPB is doing this, it is impossible for financial services companies to verify that this is being done correctly or to determine whether those procedures would be equally effective with respect to other types of financial products and services.

The CFPB also claims that, “there are . . . system controls to avoid double-counting duplicate complaints.” We understand that the complaints provided to reporters in June by the CFPB had a column indicating duplicate complaints and that the CFPB has sent duplicate complaints to financial services companies as if they were two separate complaints. Given that, we question whether duplicate complaints are being counted in the database, thus leading to an inflated number of consumer complaints.

In the Final Policy Statement, the CFPB agrees that its complaint process “does not provide for across the board verification of claims made in complaints.” The CFPB’s solution, however, is to

“disclaim the accuracy of complaints when the data are made available.” Furthermore, CFPB proclaims that outside of its own affirmative data reporting, it “will allow the marketplace of ideas to determine what the data show.” This is problematic for a couple of reasons.

First, this approach assumes that there is an obvious link between the CFPB’s formal reports and the online database. It presumes that a person will know about the CFPB’s “Reports” page, and will consult said page before going to the “Consumer Complaint Database” page to verify the accuracy of complaints. This seems unlikely. Therefore, unless the online complaint data can stand on its own, it is not likely that the “marketplace of ideas” will draw appropriate conclusions about the information contained within the database.

Second, the CFPB disclaimer only appears on its website; there is no such disclaimer in news stories about the complaint data. Furthermore, the CFPB prides itself on providing the data in such a way that users can build their own data sets, and embed those sets on websites or share them via social media. The CFPB’s disclaimer is not likely to carry over to these public data visualizations, and in fact, the CFPB does not seem to mandate that such a disclaimer be present. Baseless or frivolous complaints unfairly harm financial services companies’ reputations and makes the public disclosure of complaints useless to consumers and other users. We urge the CFPB to limit the disclosure of complaints to only those that have been both verified and validated.

#### *D. Public Disclosure of Data*

Because of the problems associated with the collection, verification and validation of complaints, we ask that the CFPB not publically disclose the names of financial services companies or the zip codes cited in the complaints. Moreover, because it would be impossible for the CFPB to draw accurate conclusions from such flawed and unverified data, we do not believe that the CFPB should make public policy decisions based on the data. To demonstrate the number of frivolous or unsubstantiated complaints, the CFPB could include a column identifying such complaints.

AFSA also urges that given the number of changes to the intake fields, the CFPB not publish complaint data prior to June 1, 2012, when the CFPB modified the resolution categories. Because of the change in resolution categories, and based on the CFPB’s own admission that the old categories were insufficient and misleading, publishing such data would be highly prejudicial to issuers and also is entirely inconsistent with the current resolution standards.

Instead of naming individual financial services companies and comparing company to company, the data should be aggregated. We understand that the CFPB may wish to compare company data against industry data to address and monitor issues ; however, there is no public policy purpose served by the release of company data. We do not think that disclosing the names of individual financial services companies serves any purpose other than as fodder for plaintiff attorneys. Disclosing the names of financial services companies may unfairly harm those companies.

Also, financial institutions with a de-centralized complaints process may show up in the database under different names – perhaps one legal entity name for credit cards and a different legal entity

name for mortgages. For institutions that have a centralized process, one legal entity name appears regardless of the type of product, e.g. credit card, mortgage, deposit accounts, etc. If someone were to do an overall rank ordering of financial services companies based on all complaints, those institutions with a centralized process and one legal entity name in the database may appear to have relatively more consumer complaints than those institutions with a decentralized process and several legal entity names in the database. The best way to level the playing field would be to not publish the names of the financial services companies.

In the Final Policy Statement, the CFPB writes, “Consumer groups commented that the disclosure of issuer names represents a significant aspect of the Bureau's policy. They noted that other complaint databases that disclose the identity of specific companies—like [National Highway Traffic Safety Administration or] NHTSA—have created pressure on companies to improve whatever metrics are measured by the public database. As a result, these groups expect the Bureau's public database to cause issuers to compete more effectively on customer service and product quality.” It is interesting that the NHTSA database is cited as a model even though there are well-documented flaws with the database.

In its Complaints Activity Report of NHTSA’s data, Edmunds.com writes, “Because consumers' descriptions and categorizations of their experiences vary, are not expressed in a consistent manner and are not adequately aggregated and analyzed by NHTSA-ODI, Edmunds recognized that there was a need to engage in a further review of the complaints and a deeper analysis of the complaints database.”<sup>2</sup>

It is instructive that analysts from Edmunds.com tried to examine the deaths and injuries reported in the NHTSA database, but quickly came to the conclusion that the data was too unreliable. “For example,” Edmunds.com writes, “One complaint indicated that 99 people had died in one vehicle as a result of an accident. It should also be noted roughly 10 percent of total complaints appear to be duplicates. Finally, this analysis did not rate the reported incidents for severity.”<sup>3</sup>

Other experts note that, “since the NHTSA complaint database has no error-checking or proof requirements, the content of the database is best described as ‘garbage.’ With garbage going into the analyses it is inevitable that garbage comes out.”<sup>4</sup> The CFPB should study the problems with the NHTSA database and take steps to avoid those problems with its own database.

We also ask that the CFPB not disclose complainants’ zip codes. The only reason to disclose zip codes is to allow people to draw conclusions about discriminatory practices since zip codes often correspond with high concentrations of people that have characteristics of particular protected classes (like members of certain racial, ethnic or religious groups). Because the data collected is unreliable and unverified, it is impossible to draw meaningful, valid conclusions from the data—but easy to make invalid conclusions that are unfairly critical. Again, while the data may be

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<sup>2</sup> Edmunds.com. *NHTSA Complaints Activity Report May 2012*. Published June 12, 2012. <http://www.edmunds.com/car-news/nhtsa-complaints-report.html>

<sup>3</sup> Edmunds.com. *Toyota Recalls Put into Context*. February 10, 2010. <http://www.edmunds.com/about/press/toyota-recalls-put-into-context-by-edmundscom.html?articleid=161506&>

<sup>4</sup> Liker, Jeffrey K. and Timothy Ogden. *Fixing Complaint Databases*. May 24, 2011. <http://www.toyotaunderfire.com/post/6240972915/fixing-complaint-databases>

useful to the CFPB when it analyzes the data more carefully, there is no valid basis to make the data publicly available by zip code area.

In addition, as both the industry and regulators are aware, high concentrations of complaints from a particular zip code may not be an indication of discrimination, even when the data is valid. Because discrimination is such an extremely troubling business practice and such an attractive headline, making the zip code available invites people to make accusations that can have exceptionally negative impacts on a financial services company's reputation, even if the claims of discrimination are ultimately unsubstantiated. Furthermore, companies that engage in debt negotiation or credit counseling could influence the data by encouraging people in a certain zip code to file unsubstantiated form complaint letters that would then lead the database to show that the financial services company had high complaints in certain zip codes.

It would be ideal if the CFPB would simply not release information by company name. However, if the CFPB is going to do so, the CFPB should at least eliminate the zip code from the fields it releases. If the CFPB sees a trend by zip code, it will have the authority to act responsibly. However, if that data is released to the public, it could be used irresponsibly to hurt the reputation of financial services companies, even if there is not a pattern of discrimination in fact.

The complaint database should not be used to drive public policy. We agree with the Oregon Department of Justice Consumer Complaint Site which explains, "Several factors, including a company's size and volume of transactions, may affect the likelihood of a consumer complaint being filed. The number of complaints about a business may not be a reliable measure as to whether it is appropriately conducting business."<sup>5</sup> The data in the complaint database is both unverified and relatively small in volume. These problems mean that, at best, it will be difficult to extrapolate conclusions from the small volume of complaints. Notwithstanding, we understand that the CFPB will use consumer complaint data for specific rulemakings (e.g., the proposed "Procedural Rules to Establish Supervisory Authority over Certain Nonbank Covered Persons Based on Risk Determination," Docket No. CFPB-2012-0021). Therefore, it is imperative that there is harmonization between the data, the policies regarding its dissemination to the public, and the use of complaints for supervisory purposes. Part of that harmonization should not only include verification and validation of the complaint data, but also recognition by the CFPB that all complaints are not created equal, and that certain types of complaints are more serious and involve greater risk to consumers.

### **III. Final Policy Statement**

The CFPB stated that it will continue to examine and develop the Final Policy Statement as needed. We ask that the CFPB take the points raised below into consideration as it does so.

#### *A. Identification Number*

One of the difficulties that AFSA members are having with the database is that the identification number that the CFPB assigns to a complaint when the complaint is published in the database

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<sup>5</sup> <https://justice.oregon.gov/complaints/>

does not seem to be disclosed to financial services companies during the complaint process. This makes it difficult for a company to: (1) determine whether the CFPB has uploaded all complaints, (2) determine whether the CFPB has uploaded the complaints correctly, or (3) track which complaints have been uploaded. In order for the company to do any of those things, the company must try to tie zip codes and issues back to the complaints the company has answered for the CFPB, and hopefully reconstruct which complaints have been published. We suggest that the CFPB assign the identification number to each complaint in a way that the financial services company knows which complaint it ties to. This way, the company can track easily which complaints have been published and verify that they agree with what is in the database.

### *B. Normalization*

The CFPB intends to work further with commenters on specific normalization proposals. We are glad that the CFPB recognizes the importance of normalization. By their nature, larger financial services companies will have more complaints than smaller ones, and financial services companies not supervised by CFPB will not show up at all. So unless complaint data is normalized, the disclosure of the data may not offer any meaningful information. Normalizing the data will show that the rate of complaint volume is not necessarily higher. Additionally, some products may, by their very nature, have higher complaint rates than others, which could cause financial services companies' complaint incidence to vary more by product mix than by performance. Thus, it is important that the product data be normalized as well. We would be happy to work with the CFPB on specific normalization proposals. Unfortunately, the time period for this comment request is too short to suggest specific normalization proposals in this letter, but we look forward to continuing to engage with the CFPB on this important issue.

### *C. Location Fields*

In the Final Policy Statement, the CFPB expressed its intention of analyzing whether there are ways to disclose more granular location fields than zip codes without creating privacy risks. We do not believe that would be possible and suggest that the CFPB focus on fixing the current problems with the database before looking for additional disclosures.

### *D. Discrimination Field*

AFSA believes that it is appropriate that the CFPB plans not to disclose discrimination field data in the public database at this time and we encourage the CFPB to maintain that policy. In light of the seriousness of such allegations, and because the allegations cannot necessarily be verified, we agree that this data should not be released. AFSA members have seen incidences where the consumer claimed discrimination merely because the consumer did not receive the goods or services from the merchant. The value of collecting such complaints or reporting them to the public is not evident.

### *E. Issue Categories*

The CFPB asked for further input on the data field for issue categories. AFSA believes that the CFPB staff should take on the role of "tagging" complaints as relating to a specific category or

allow the companies the right to correct the issue or category, instead of relying on the customer to categorize their complaint. As noted above, AFSA members have observed that consumers often incorrectly choose the complaint category. Information in the database, whether disclosed to the public or utilized internally by the CFPB, is of little value unless it accurately describes activities by financial services companies that indicate past or potential violations of consumer protection laws or regulations. By allowing consumers to select the complaint category and by encouraging them to self-identify preferred remedies, the CFPB has introduced serious flaws into the database.

We also believe that the CFPB should remove the issue category “billing disputes.” The CFPB’s release of billing error complaint data is misleading. In particular, card issuers are not the “insurers” for consumers to protect against dealing with merchants. Under the law, the card issuers’ sole duty is to perform a reasonable investigation, but the CFPB has perpetuated a misperception that card issuers should refund cardmembers for every single transaction, regardless of the age of the transaction or other issues that prevent issuers from performing chargebacks under network rules.

#### *F. Response Categories*

AFSA appreciates the changes that the CFPB made to the Complaint Systems’ Issuer response categories. We agree that the addition of the “Closed with non-monetary relief” response category and the “Closed with explanation” response category reduce risk that reviewers fail to accord appropriate significance to cases that are closed satisfactorily and allow reviewers and consumers to see in more detail how financial services companies resolve the complaints filed against them.

As mentioned above, we strongly recommend that given these changes, the CFPB not publish complaint data prior to June 1, 2012, when the categories were changed. Because of the change in resolution categories, and based on the CFPB's own admission that the old categories were insufficient and misleading, publishing such data would be highly prejudicial to issuers and also is entirely inconsistent with the current resolution standards. (We especially do not think that the CFPB should be releasing complaint data prior to when the CFPB officially took responsibility for collecting complaints on December 1, 2011. We do not understand why the complaints released to reporters in June show 842 mortgage complaints prior to that date.)

We also request that the CFPB publish clear definitions of the terms used in the database. For example, the CFPB should define what “closed” means and who determines that the complaint is closed. What happens when a financial services company decides a complaint is closed, but then the CFPB decides to send that complaint back to the financial services company a month later? Does it count as a new complaint?

#### *G. Consumer Narrative Field*

The CFPB stated that disclosing the narrative data field would pose too much privacy risk to consumers and so it will not publish narrative data until such time as the privacy risks of doing so have been carefully and fully addressed. AFSA strongly supports this position. A detailed



narrative may enable others to identify the consumer, even if it does not contain standard personally identifiable information such as a name or account number. Additionally, some narratives might contain information that the consumer would be embarrassed to see in a public database. Moreover, consumers, fearing potential disclosure of personal information, may be reluctant to file complaints.

At a minimum, AFSA requests that financial services companies be granted to the right to comment, should the CFPB intend to release such information, as it suggested it may do in the Final Policy Statement.

#### *H. Addition of New Data Fields*

As noted in the Final Policy Statement, the CFPB is open to the inclusion of additional data fields. AFSA believes that before adding additional data fields, the CFPB should open a public comment period on each proposed field.

Also, we caution that additional data fields may impose an increased burden on consumers and so make the submission of complaints less likely.

As mentioned above, we suggest that to provide some insight as to the number of frivolous or unsubstantiated complaints, the CFPB should include a column identifying such complaints.

#### *I. Timing for Response to Complaints*

The Final Policy Statement seems to imply that financial services companies have 15 days to (1) respond to a complaint or (2) file a request for the full 60 days to respond to a complaint. We request that the CFPB confirm that when companies request the full 60 days to respond, the complaint will show as being “in progress” until either the 60 days is up or the company responds to the complaint. Additionally, we request that the CFPB confirm that in the event an financial services institution has made a timely request for the full 60 days and has answered the complaint within that 60 day time frame, the database then will show that the complaint was answered in a timely fashion.

#### *J. Dates*

Any release of consumer complaint data should clearly indicate the date the data was released and the date range for complaints. Different newspapers had differing analysis of recently released complaint data depending on the time period for which the data was pulled. In addition, the CFPB states that it is continually refreshing the database. However, neither the CFPB’s webpage nor the public database indicates when the data was last updated.

AFSA believes that the CFPB should purge old consumer complaints from the database. We recommend that the CFPB set a timeframe for how long complaints remain in the database and delete complaints out of that timeframe.

#### **IV. Conclusion**

Because of the number of problems with the collection of consumer complaints, the verification and validation of complaints, and the release of the complaint data, AFSA encourages the CFPB to wait before expanding the database to include consumer complaints about financial products and services other than credit cards. The CFPB, consumers, and financial services companies would be better served if the CFPB took to time to fix the problems with the complaint system before disclosing additional data. The CFPB has said that it will only release data from supervised entities, so it would make sense for the CFPB to decide which entities it is supervising (i.e. finalize the larger participant and risk determination rules) before expanding the complaint system.

We look forward to working with the CFPB to resolve the concerns expressed in our letter. Please contact me by phone, 202-466-8616, or e-mail, [bhimpler@afsamail.org](mailto:bhimpler@afsamail.org), with any questions.

Sincerely,

A handwritten signature in black ink that reads "Bill Himpler". The signature is fluid and cursive, with the first name "Bill" being larger and more prominent than the last name "Himpler".

Bill Himpler

Executive Vice President

American Financial Services Association