



January 30, 2012

Ms. Monica Jackson
Consumer Financial Protection Bureau
1500 Pennsylvania Avenue, NW
(Attn: 1801 L Street)
Washington, DC 20220

***Re: Disclosure of Certain Credit Card Complaint Data
(Docket No. CFPB-2011-0040)***

Dear Ms. Jackson,

The American Financial Services Association (“AFSA”) welcomes the opportunity to comment on the Consumer Financial Protection Bureau’s (“CFPB”) notice of proposed policy statement (“Policy Statement”) that addresses the CFPB’s disclosure of credit card complaint data. 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. Names of Card Issuers Should Not Be Disclosed

AFSA strongly believes that the name of the card issuer should not be disclosed in the credit card complaint database and in the CFPB’s own periodic reports. Instead of naming individual card issuers and comparing issuer to issuer, the data should be aggregated. We understand that the CFPB may wish to compare issuer data against industry data to address issues and monitoring; however, there is no public policy purpose served by the release of issuer data. We do not think that disclosing the names of individual card issuers serves any purpose other than as fodder for plaintiff attorneys. Moreover, disclosing the names of individual card issuers may unfairly harm those issuers for several reasons. For example, the narrow definition of “Relief,” could result in complaints that have actually been resolved satisfactorily being filed as “Closed without Relief.” Also, the complaint categories are problematic. Data disclosed about an individual card issuer may be misleading because consumers often incorrectly choose the complaint category. The discrimination box may lead to a number of “false positives.” Lastly, duplicate complaints may inflate the statistics.

We believe there is robust evidence for the CFPB to support a decision not to disclose the names of card issuers. For instance, the OCC issued an interpretive letter on Jan. 12, 1991 that held that the disclosure of the national banks contained in customer complaints is not required under the Freedom of Information Act (“FOIA”). (Interestingly, the CFPB just relied on another 1991 OCC Interpretive letter in Len Kennedy’s Jan. 14, 2012 letter on the CFPB’s Supervisory Authority and Treatment of Confidential Supervisory Information.) The OCC letter relied in part

on Exemption 4 under FOIA and held that the bank name relative to complaints is confidential because releasing the name would impair the ability of the government to collect such information in the future and might cause competitive harm to the bank because the data may result in distorted interpretation. The letter also noted that Exemption 8 under FOIA has the purpose of preserving a confidential relationship between banks and their federal regulators to encourage cooperation. The OCC letter stated that these considerations outweigh the public's interest in obtaining the information with just the bank names deleted.

The CFPB's own regulations also support not disclosing the card issuer's name. In the CFPB's Regulation on Disclosure of Records and Information, the CFPB's definition of "confidential information" includes confidential consumer complaint information, confidential investigative information, and confidential supervisory information. The CFPB defines "confidential consumer complaint information" as information received or generated by the CFPB pursuant to its complaint requirements that comprises or documents consumer complaints or inquiries concerning financial institutions or consumer financial products or services and responses thereto, to the extent that such information is exempt from FOIA disclosure. The CFPB's definition of "confidential supervisory information" includes "any information provided to the CFPB by a financial institution to enable the CFPB to monitor for risks to consumers in the offering or provision of consumer financial products or services..." (12 C.F.R. § 1072.2(i)(1)(iv)). The regulation goes on to state that the CFPB shall not disclose confidential information by any means (including written or oral communications) or in any format (including paper and electronic formats to any person who is not an employee of the CFPB (12 CFR 1070.41(a)). Although the CFPB may, at its discretion, disclose materials that it derives from or creates using confidential information to the extent that such materials do not identify, either directly or indirectly, any particular person to whom the confidential information pertains (12 CFR 1070.41(c)). "Person," in this case, includes company, corporation, and association.

In the event that the CFPB concludes that identifying the card issuer in the complaint database is appropriate (although, as stated above, we believe it is not), the CFPB should take appropriate steps to ensure that the issuer is accurately identified in the database. For example, many card issuers offer private label credit cards or co-branded credit cards to customers of retailers. These cards are generally branded with the retailer's name. In the "Bank Name" field of the CFPB's complaint submission form, a cardholder could erroneously provide the retailer's name instead of the bank's name. If, as a result, the CFPB publishes the retailer's name in the complaint database, it could result in harm to such retailer's reputation. Therefore, we request that the CFPB aggregate all complaints filed in private label or co-branded programs at the bank level.

Similarly, consumers have filed complaints against card issuers which are really merchant disputes. For example, AFSA members have gotten several complaints where the consumer is disputing a charge that has already been credited or requesting assistance with chargebacks.

II. Redefine Resolution Statuses

We ask that the CFPB redefine the resolution statuses because a complaint against an issuer that was "Closed without Relief" may unfairly carry negative implications. In fact, because the "Closed without Relief" is narrowly defined by the CFPB as a resolution that has objective,

measurable, and verifiable monetary value to the consumer, a complaint could be resolved in a manner favorable to the consumer, but still be classified as “Closed without Relief.” Examples of this include: adding a consumer to the Do-Not-Call list, removing an authorized buyer, determining that payments were applied correctly to the balance, pulling an account back from further collection due to income (i.e., the consumer is on social security), and advising consumers to contact the card issuer to discuss payment programs (which card issuers cannot do until the consumer calls). One example of this is if the consumer’s complaint states that the consumer gets too many calls from the card issuer and the issuer stops calling the consumer, the complaint has been resolved. However, because this resolution has no monetary value, the card issuer must choose the “Closed without Relief” option. This could unfairly taint the card issuer’s reputation, not withstanding that the complaint has actually been resolved as the consumer requested.

We request that “Closed with Relief” have sub-categories for monetary and non-monetary relief, thus alleviating the issue with resolutions categorized under “Closed without Relief,” when in fact a satisfactory resolution may have been reached, but is simply not monetary relief.

III. Complaint Categories Are Problematic

A. Misleading Data

The data disclosed about an individual card issuer may be misleading because 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 card issuers 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.

For example, AFSA members have noted that many consumers put complaints about closure requests, disputed chargeback resolutions, do-not-solicit requests, minimum payments, 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.

Self-reported information that is not independently verified and that has not been determined to state even a *prima facie* violation allows anecdotes, misstatements of fact, or disputes based on a misunderstanding of applicable law, to be comingled with, or substituted for, facts. Thus, at the

outset, the CFPB should either (1) assign the complaint category itself after reviewing the complaint, which would ensure consistency among issues; or (2) use a decision channel which would ask the consumer questions, and the answers would produce the complaint type that is transmitted to the issuer. In any case, better complaint titles and definitions for each would improve the accuracy of complaint type choices.

The CFPB should also clarify the meaning of the categories it uses, particularly since it intends to make this information publically available. The CFPB's November 30, 2011 "Interim Report" on the credit card data base lists 32 data fields, but their content is not always evident. We respectfully request that the CFPB provide card issuers with a report with the aggregated data every month or quarter.

B. Discrimination

The discrimination category is not meaningful since it may lead to "false positives." For example, AFSA members have seen incidences where the consumer claimed discrimination 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. 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. In recognition of industry concerns regarding the inclusion of this question in the credit card complaint system, the CFPB adjusted the consumer complaint form to include a drop down menu to enable consumers to describe the nature of the discrimination. Because industry and the CFPB have acknowledged that this question is problematic – and given the seriousness of a claim of discrimination and the resources that a company would need to devote to disprove such a claim – the CFPB should utilize their cognitive testing on this particular question to isolate issues related to its deployment before continuing its inclusion in other Complaint Systems.

C. Duplicates

In other cases the complaint categories appear to be duplicative (e.g., "collection debt dispute" and "collection practices") or are simply unclear. For duplicate complaints, we would like a definition of what is considered a duplicate. We believe that the CFPB defines duplicate complaints as complaints that are duplicated verbatim. However, card issuers have consumers who re-file the substantially same complaint, but this does not seem to be considered a duplicate. We ask that the CFPB review and verify complaints are not virtual duplicates before sending them to the issuer for review.

Anyone using the database would benefit from clear definitions about the information that is assigned to each data field, and we urge the CFPB to provide this information to avoid misunderstandings. For example, are "advertising and marketing complaints" limited to those about misleading or deceptive claims (a legitimate basis for CFPB action) or does this field include gripes that are outside the regulatory ambit (e.g., complaints about receiving "too many solicitations" or complaints about the tone, theme, or the actors appearing in, television ads for credit cards)? What is included in the category of complaints about "APR or interest rate?" Does

it include general expressions of dissatisfaction (“their interest rates are too high”), or is it limited to allegations about violations of specific obligations regarding interest rates, such as disclosure requirements and restrictions on changing interest rates?

Indeed, the content of the complaint field listed in the Interim Report as generating the largest number of complaints (“billing disputes” - 13.4% of the total) is unclear. Is this field limited to allegations concerning a card issuer’s alleged failure to comply with its obligations under the Fair Credit Billing Act to assist consumers in resolving complaints about transactions on their account? Or does it include general complaints about products or services purchased with a credit card (“the toaster doesn’t work”), complaints that are really about the providers of goods and services purchased with a card, not about the credit card issuer. Does the “billing disputes” field include complaints about the inability to recognize transactions on a periodic statement that may not have previously been disputed with the card issuer?

IV. Zip Codes

We ask that the CFPB not disclose complainants’ zip codes. People tend to think that they can 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). However, both the industry and regulators are well aware from experience that high concentrations of complaints from a particular zip code may not be an indication of discrimination. Because discrimination is such an extremely troubling business practice and attractive headline, making the zip code available invites people to make accusations that can have exceptionally negative impacts on a card issuer’s reputation, even if the claims of discrimination are ultimately unsubstantiated. In fact, companies that engage in debt negotiation or credit counseling could even influence that data by encouraging people in a certain zip code to file unsubstantiated form complaint letters that would then lead the database to show that creditor had high complaints in certain zip codes.

It would be ideal if the CFPB would simply not release information by issuer name. However, if the CFPB is going to do so, the CFPB should at least eliminate the zip code from the non-narrative 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 card issuers even if there is not a pattern of discrimination.

V. Data Must Be Normalized

AFSA agrees with the CFPB that some trend and pattern data may need context to make the data informative to consumers. We agree that complaint counts by issuer should be weighted appropriately against the relative size of an issuer’s credit card business – a process commonly referred to as “normalization.” By their nature, larger issuers will have more complaints than smaller issuers. So unless complaint data about issuers 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.

We also agree that some products may, by their very nature, have higher complaint rates than others, which could cause issuers' complaint incidence to vary more by product mix than by performance. Thus, it is important that the product data be normalized as well.

We understand the difficulty of normalizing data. Finding a general data point for products or denominator of normalization, such as the average complaint rate for a particular product, is not easy. For example, the CFPB might say that card issuer ABC has 1000 credit card complaints per million accounts and the average credit card complaint volume for issuers was 750 per million for credit card complaints. However, the problem with using complaints per million accounts and the average credit card complaint volume is that there can be complaints about non-accounts, such as complaints from consumers who were turned down for accounts. The difficulty in finding a denominator further demonstrates why normalization may be too difficult and the issuer name should not be released (thereby making normalization less of an issue).


AFSA believes that the CFPB should categorize the complaints by type of card – private label and general purpose. Mortgage complaints are broken into six different types of mortgages, but credit cards are not. Our experience indicates that private label credit cards garner more complaints than other general purpose cards because many complaints are about the merchant as well as the issuer. In the general purpose context, people are less likely to relate the merchant to the issuer, and so we see fewer complaints about merchants. In any event, if the complaint volumes for these two types of credit cards differ substantially industry-wide, it does not make sense to add them together when normalizing the data because different issuers will have different portfolio makeup. One issuer may have a majority of private label cards, one may have almost none. Lumping private label and general purpose credit cards together and applying a general average to normalize data may show that an issuer with almost no private label portfolio has very good averages for credit card complaints, when in fact they do not really have a low amount compared to other general purpose credit card averages.

The CFPB could consider asking consumers to choose the type of card they have when making the complaint. However, that may be too confusing for consumers. Alternatively, the CFPB could consider whether challenges such as this make it too potentially prejudicial and unhelpful to release data by issuer in the first place.

VI. Conclusion

We look forward to working with the CFPB to resolve the concerns expressed in our letter. Please contact me by phone, 202-466-8616 ext. 616, or e-mail, bhimpler@afsamail.org, with any questions.

Sincerely,



Bill Himpler
Executive Vice President
American Financial Services Association