American Financial Services Association

Protecting Credit Since 1916

September 22, 2014

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

Re: Disclosure of Consumer Complaint Narrative Data (Docket No. CFPB-2014-0016)

Dear Ms. Jackson:

The American Financial Services Association ("AFSA")[1] strongly believes that the Consumer Financial Protection Bureau ("CFPB" or "Bureau") should not finalize its proposed policy ("Proposed Policy Statement") to expand the complaint data it currently discloses to include unstructured consumer complaint narrative data ("consumer narratives").

Before explaining in detail why the CFPB should not finalize the Proposed Policy Statement, we believe that it is important to emphasize that AFSA members take consumer complaints very seriously. In a recent blog post, the group Americans for Financial Reform wrote, "By making some of the data public, the bureau hopes to empower consumers and, at the same time, to inspire companies to seriously investigate and respond to complaints, since it would be impractical for the bureau to investigate them all."[2] We resent the implication that financial services companies do not seriously investigate and respond to complaints. With the large number of financial transactions that our members conduct with their customers every day, intermittent mistakes can and do happen. It would be unrealistic to assume otherwise. Our members recognize this and they also understand that it is vitally important to "get it right" for the customer when an issue does arise. Simply put, customer goodwill is a cornerstone of any successful business. Without it, a business cannot survive for very long. We are in agreement with the CFPB in that we want markets to function transparently and efficiently. AFSA members care about their customers and potential customers and want them to have timely, understandable, and accurate information about consumer financial products and services. AFSA members have every incentive to respond quickly and thoroughly to any consumer complaints.

Nonetheless, we strongly believe that the Proposed Policy Statement is impracticable and unworkable for the following reasons: (1) it does not adequately protect consumers' privacy, (2) information from publicizing unvalidated and unverified consumer narratives will not be beneficial to consumer choices, (3) making both the consumer narrative and the company's

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

[2] Americans for Financial Reform, "Big Finance's Ploy to Keep Consumers in the Dark." Sept. 9, 2014. http://blog.ourfinancialsecurity.org/2014/09/09/big-finances-ploy-to-keep-consumers-in-the-dark/

response public will unfortunately have a chilling effect on communication between the two parties, and (4) it does not address the unjustified and significant brand and reputational risk to financial services companies.

The CFPB states that other government websites include databases with narratives that have helped inform consumers about a range of products. The Bureau would like to empower consumers with the same type of information, but for financial products and services. However, the comparison is not valid. Information about a consumer's experience with a financial product or service is covered by number of privacy restrictions. These restrictions do not apply to consumer narratives about other products.

The Proposed Policy Statement also presents certain legal challenges that the CFPB must address. These challenges reflect Congress' hesitation as to whether consumers will be best served by the addition of public-facing consumer narratives.

We suggest that instead of finalizing the Proposed Policy Statement, the CFPB publish select consumer narratives in a quarterly report.

I. <u>The Proposed Policy Statement is Impracticable and Unworkable</u>

1. *The CFPB's Consumer Complaint Database does not protect consumers' privacy. Publicizing the consumer narratives will increase the risk and extent of breaches of consumers' privacy without their knowledge and informed consent.*

Protecting consumers' personal and financial information should be of upmost importance to any government agency, especially a consumer-focused agency like the CFPB. Consumers are well aware of the frequent incidents of data breaches, as evidenced by the headlines announcing the latest hacking incursion or deceptive email asking for additional personal information. The CFPB's Consumer Complaint Database does not protect consumers' privacy because anyone with Internet access can use the Consumer Complaint Database to find personally identifiable information. Additionally, there have been audits and reports that question the security of the CFPB's data systems.

In point of fact, the Consumer Mortgage Coalition explains how easy it is to find the name and address of a consumer who submitted a complaint:

> "As a simple test, we searched the database for one zip code for mortgage complaints about "settlement process and costs," one of the categories specified. We sorted the data in that zip code and category for complaints involving Federal Housing Administration ("FHA") loans – with just a few keystrokes – and identified all complaints in that zip code about settlement process and costs on FHA loans during one period of time. We compared that information to the public land records, which are available online for free, and found only one FHA loan that had closed in that zip code within months of the complaint date. A reasonable assumption is that a complaint about a loan settlement would occur near the time the loan closed. From this public information, we were easily able to learn the name and address of the borrowers (there are two on this loan), their

> lender (even though the complaint may have related to the settlement agent rather than the lender), their original loan amount, and were able to see their security instrument.
>
> We declined to search for additional information about these two consumers, but having their names and address would make that easy to do."[3]

Additionally, George Washington University Professor Anthony M. Yezer testified before Congress about how easy it is to identify a borrower using the information from the Home Mortgage Disclosure Act ("HMDA")[4] reports.

> "Given that HMDA reports the year, census tract, mortgage amount, and mortgagee and that local property report the transaction year, property address, price, mortgagee, and name of the owner, it is possible to identify the precise individual whose mortgage appears in HMDA data unless a lender is very active in a particular census tract. I have done this matching in my own research and found that I can identify up to 60% of mortgagors. Put another way, there is no privacy protection in HMDA data for those whose mortgagee was an very active lender in the area!
>
> Second, someone should consider the privacy issues inherent in HMDA data, particularly when the sample is extended to cover smaller lenders. I suspect that members of Congress and the general public would not be happy to learn that it is possible to match their individual names with the information revealed in HMDA records!"[5]

In short, if a consumer includes the same information as reported in HMDA – the year, zip code, loan amount, and lender – in her complaint, which is not unlikely (especially given that the zip code and lender name are required), it is possible to use other public information to identify the consumer.

As shown, personally identifiable information can be obtained from public data. Yet, the CFPB does not clearly and unambiguously disclose to consumers that it may be possible to identify them from the information provided through the Consumer Complaint Database. For example, if the consumer is not told that the statement in the narrative may be traceable to her, then she may state in her narrative that she is having trouble meeting her credit obligations. Yet, by doing so it could be possible for anyone to identify her as the author of the complaint. In other words, she could have unknowingly posted publicly, for all her friends to see, that she does not have the money to pay her bills. This is a serious breach of her expectation of privacy and calls into question the CFPB's dedication to protecting consumer privacy.

Unless the CFPB clearly discloses the potential risks the consumer faces by choosing to publicize the narrative portion of her complaint, the CFPB cannot be confident that the consumer has made an informed decision to allow her information to be publicly disseminated. This would

[3] Consumer Mortgage Coalition ("CMC Letter") dated August 26, 2014 submitted in response to the Proposed Policy Statement.
[4] 12 U.S.C § 2801.
[5] Yezer, Anthony M. "Subprime Lending: Defining the Market and its Customers," testimony, March 30, 2004, before the U.S. House, Committee on Financial Services, Subcommittee on Housing and Community Opportunity and Subcommittee on Financial Institutions and Consumer Credit.
http://democrats financialservices house.gov/media/pdf/033004ay.pdf

be an unacceptable business practice for a financial services company. We should expect no less from a government agency, regardless of the magnanimity of their motivation in obtaining such non-public information.

In addition to disclosing that it may be possible to identify the complainant, the CFPB should inform consumers that any information they post may be discoverable in litigation and potentially could be used against them in court. Consumers should also have to be advised that they should speak with legal counsel before consenting to this type of disclosure.

Getting informed consent from all parties involved is also difficult. For example, a wife could submit a complaint about a joint bank account she holds with her husband. The wife could say that she consents to making the narrative public. Does the CFPB publish the narrative with the wife's consent, even though the joint account holder, the husband, has not consented? What happens if someone submits a complaint on behalf of another consumer and says that the consumer consents to the making the narrative public without actually checking with the consumer? Will the CFPB verify the identity of every consumer who makes a complaint and the status of their accounts to ensure the consent is valid?[6]

Even if the CFPB was able to somehow fully disclose the risks of choosing to publicize the narrative and verified that all parties involved gave their fully informed consent, we still question the advisability of increasing the amount of public data in a system over which the federal government itself has already expressed concerns. The Government Accountability Office ("GAO") published a report stating that the, "…CFPB, contrary to the provisions of FISMA [Federal Information Security Management Act of 2002], had not developed, documented, and implemented an agencywide program to provide information security for the information and information systems that support the financial reporting, operations, and assets of the bureau, including those systems provided or managed by its service provider organizations."[7]

Consider also that the Office of the Inspector General ("OIG") stated in a March 2013 report audit that the CFPB needs to strength its security controls.[8] As recently as July 2014, the OIG reported that, "… we found that improvements are needed to ensure that FISMA processes and controls are effective and consistently implemented across all information security areas for the GSS [general support system]."[9] The CFPB may have improved its systems as a result of these findings, but neither the GAO or OIG has so far released a report validating the possible

[6] Companies have several ways to verify that they are communicating with the consumer herself. For example, the company may call a consumer back at a number previously provided, the company may ask verification questions, or the company could ask for a password.
[7] Government Accountability Office, "Management Report: Opportunities for Improvement in the Bureau of Consumer Financial Protection's Internal Controls and Accounting Procedures." May 21, 2012. http://www.gao.gov/assets/600/590993.pdf
[8] Office of Inspector General, "Executive Summary: Security Control Review of the Consumer Financial Protection Bureau's Consumer Response System." March 28, 2013. http://oig federalreserve.gov/reports/cfpb-executive-summary-20130328b htm
[9] Office of Inspector General, "Executive Summary: Security Control Review of the CFPB's Cloud Computing–Based General Support System." July 17, 2014. http://oig federalreserve.gov/reports/cfpb-it-cloud-computing-jul2014 htm

improvements. As it stands today, the CFPB cannot ensure that personally identifiable information submitted by consumers will be adequately protected and safeguarded.

Finally, we note that the OIG is in the process of auditing both the CFPB's Consumer Complaint Database and Information Security Program. The results of these audits are expected to be released in the Fourth Quarter of 2014.[10] We believe that in the interest of best protecting consumer's privacy, the CFPB should have waited to review the audit results and make any recommended changes before introducing the Proposed Policy Statement.

2. *Information from publicizing unvalidated and unverified consumer narratives is not in the best interest of consumers and will not help facilitate informed consumer decisions. In many circumstances unverified or unsubstantiated accusations will result in misleading or inaccurate information being published through the CFPB, which will be harmful to consumers*.

According to the CFPB, the purpose of the Consumer Complaint Database is to, "… provide consumers with timely and understandable information about consumer financial products and services, and improve the functioning, transparency, and efficiency of markets for such products and services."[11] The Bureau believes that, "… adding additional information to the Consumer Complaint Database, such as narratives, is consistent with and promotes this purpose."[12] AFSA respectfully disagrees. However, given the high probability that some of the narratives will contain materially inaccurate information, adding the consumer narratives to the Consumer Complaint Database will not provide consumers with useful information about consumer financial products and services. On the contrary, there will be unverified consumer narratives that will harm unsuspecting consumers because consumers will read the narratives assuming that they are accurate and therefore a trustworthy source upon which to base an important financial decision. Encouraging consumers to rely upon what could often be erroneous information is simply not excusable in the private context and should certainly not be allowed by a government agency.

Moreover, in its press release announcing the Proposed Policy Statement, the CFPB claims that the benefits of sharing the consumer narratives include spotlighting specific trends and helping consumers make informed decisions, as the National Highway Traffic Safety Administration's (NHTSA) SaferCar.gov has done. We strongly believe that disclosing unvalidated or unverified consumer narratives will do neither of those.

On the CFPB's webpage for the Consumer Complaint Database, the CFPB includes a small disclaimer, "We don't verify all the facts alleged in these complaints but we take steps to confirm a commercial relationship between the consumer and company."[13] This disclaimer is simply not sufficient for the basic concept of providing the consumer with useful, accurate information. The limited disclaimer leaves open the question of which facts, if any, did or will

[10] Office of the Inspector General, "Work Plan," August 22, 2014. http://oig federalreserve.gov/reports/work-plan-full htm#CFPBOngoing
[11] 79 Fed. Reg. 42766 (July 23, 2014).
[12] *Ibid.*
[13] http://www.consumerfinance.gov/complaintdatabase/

the CFPB verify. Consumers are likely to assume a level of accuracy and validity in the complaints because they are posted on a government website. This is yet another reason why the CFPB should not post the consumer narratives. While consumers' assumptions about the truth of unverified complaints will cause real harm to both their immediate financial decisions and a company's reputation, it will certainly cause even more harm should an unverified or unsubstantiated consumer complaint that was not accurate become public. In truth, the unwillingness or inability of the CFPB to verify the accuracy of the facts and circumstances of a consumer complaint will in fact have the opposite effect of facilitating *less*-informed and *less*-transparent consumer choices.

It is interesting that SaferCar.gov is cited as a model, since 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."[14]

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."[15]

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."[16] So will it be here – allowing uncorroborated "narratives" to be posted equates to the "garbage in," and the "garbage out" will be the bad decisions of subsequent consumers who relied (unbeknownst to them in error) on the garbage in to make important decisions.

[14] Edmunds.com, "NHTSA Complaints Activity Report May 2012." June 12, 2012. http://www.edmunds.com/car-news/nhtsa-complaints-report html
[15] 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&
[16] Liker, Jeffrey K. and Timothy Ogden, "Fixing Complaint Databases." May 24, 2011. http://www.toyotaunderfire.com/post/6240972915/fixing-complaint-databases

Similarly, if the comments posted on the CFPB's Facebook page are representative of the types of consumer narratives that can be expected, then it seems likely that many of the complaints will not be useful. For example, here is one comment:[17]

> Eric Dela Pena Investments green party would state continues of supportive a person
> Notice for exchanges was and still is judge by accountable though a
> Passive of functional units of sasses Edward white a known person as
> Equal to Eddy 6th street when in fact of legalized to critic most of
> The time. Legally my name Is Eric Della Pena in objections to Eric
> Degusman was the other misfortunate to decline in peril it's has been
> Notice of reason to not grant my social privacy to any one with the
> Last name of Degrusman At 825 I was at target and still I have no cash and me
> and Hector Rivera and Hector Morales and Edward/John Ramirez along with 12
> and market and 6th St. with Mission Neighborhood center has been out of aid for
> so long no one from general services agency got anything no benefit was granted
> people who live on low incomes such as family care was denied there benefit's
> we people are civilians so why is it so difficult on the 04/02/2014 at 1pm at GSA
> while waiting in line I was confronted by A family member to degrusman who
> works at general human services agency wow people can act so if family is the
> issue but still would not prove unequal pay according to wall street
> http://quotes.wsj.com/CA/XTSX/GSA/interactive-chart

While we recognize that most consumers would choose to ignore such nonsensical comments as this, the real peril lies in a consumer relying upon a narrative that is more facially believable, yet totally groundless in fact. That is, by being less obviously nonsensical, but nonetheless erroneous, the consumer is harmed just as much as the target company of the erroneous narrative. In this respect, we should also note that there have been many complaints about other websites whose purpose is to help consumers better navigate the marketplace. Some comments make no sense, like the comment above. Others are inaccurate, motivated by spite, or may even be posted by competitors trying to gain an edge.

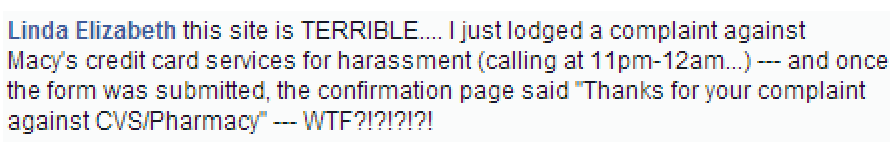
According to the Boston Globe, "Researchers estimate that up to one-third of online reviews are phony — many on small sites without robust fraud detection."[18] The article specifically discusses the website, TripAdvisor.com, which contains hotel reviews and travel advice from consumers. The article states that TripAdvisor, "… filters out about a quarter of its 42 million reviews, some considered fake, other just unhelpful."[19] The article notes that several analysts have found that the number of negative fake reviews aimed at competitors is on the rise.[20] Yelp.com, a restaurant review site, is also a highly criticized website. Award-winning chef and entrepreneur David Chang said, "Most of the Yelp reviews are wrong. They just are. Yelp is great for finding information if you forgot the address of a place.… But for the most part, no chef is going to take a Yelper's review seriously …."[21]

[17] Pena, Eric Dela, Comment on CFPB Facebook Page. Retrieved August 2014. https://www.facebook.com/CFPB?ref=br_tf
[18] Johnston, Katie, "Review websites try to thwart false customer ratings." Boston Globe. September 25, 2013. http://www.bostonglobe.com/business/2013/09/24/fake-online-reviews-proliferate-fraud-detection-efforts-grow/aWsy3l5xQAfJxczMySMMKL/story html
[19] *Ibid.*
[20] *Ibid*.

Despite the negative reviews of these public sites, at least TripAdvisor and Yelp post both positive and negative reviews. The Consumer Complaint Database can only provide negative reviews on the providers' products, potentially misleading consumers. The nature of the database, including the advertised goals and objectives, provide no incentive for consumers to add favorable information which could be very help to other consumers, even if made technically possibly by the Bureau.

The data from public narratives could also be manipulated by just a few fraudulent consumers intent on deceiving others for their own nefarious purposes. For example, a customer who refuses to be satisfied with a response could inundate the Consumer Complaint Database with repeat complaints. In another example, someone looking for attention could start a letter writing campaigns to deluge companies with frivolous complaints. In addition, the number of complaints could also increase by an individual looking to publish disparaging comments, rather than seeking a legitimate response to a complaint. A large number of frivolous complaints also diminishes the ability to use the data to spot actual trends in the financial services industry, one of the justifications for publishing the consumer narratives. Unfortunately, a public complaint system, particularly one run by the federal government, lends itself to manipulation. The CFPB's Consumer Complaint Database does not include any protections against manipulation and fraud by hackers, disgruntled customers or employees, or other companies exposing target companies to unjustified and significant brand and reputational risk.

Our concern with the "garbage in, garbage (bad decisions) out" is demonstrated also by our members who have discovered and documented numerous errors in their experience with the way the CFPB handles consumer complaints that are received through the CFPB's Portal. AFSA members have found it difficult to get these errors corrected. One member noted that as many as 50% of the complaints his company receives actually belong to another company. Even consumers have noticed errors with the Consumer Complaint Database. One consumer even posted on the CFPB's Facebook page:[22]


Linda Elizabeth this site is TERRIBLE.... I just lodged a complaint against Macy's credit card services for harassment (calling at 11pm-12am...) --- and once the form was submitted, the confirmation page said "Thanks for your complaint against CVS/Pharmacy" --- WTF?!?!?!?!

Finally, several AFSA members have commented that it takes many attempts and a long time to get errors corrected. When a consumer narrative is made public, especially if it is a subjective, vitriolic complaint, the harm that complaint can do to a company is unjustly magnified. If the narrative identifies the wrong company or contains inaccurate facts, there will be harm to the company that is completely unwarranted. More importantly, consumers would be misinformed as to a company's true reputation and good record. This does a considerable disservice to one of the stated goals for publishing the narratives – helping to inform consumers in making better choices.

[22] Elizabeth, Linda. Comment on CFPB Facebook Page. Retrieved August 2014. https://www.facebook.com/CFPB?ref=br_tf

3. *Making both the consumer narrative and the company's response public will unfortunately have a chilling effect on communication between the two parties. Companies will be legally restricted from providing detailed responses to the consumer through the public Consumer Complaint Database.*

The main reasons consumers submit complaints to the Consumer Complaint Database are to have complaints resolved or questions answered. AFSA members are very happy to engage with their customers and want to quickly resolve complaints or answer questions, with as much detail as necessary. If both the complaints and answers are publicly posted, companies will be legally restricted by the Gramm-Leach-Bliley Act ("GLBA")[23] from providing the level of detail in their response as they could provide in a private forum.[24] Thus, consumers will not be able to receive the information they need in a timely manner through the Consumer Complaint Database. This defeats the chief purpose of the Consumer Complaint Database.

Because companies are legally restricted from providing an informative public response to a complaint, other consumers will not learn anything from a company's response. The reason for making the narratives and company responses public is so that other consumers can learn from both, enabling them to make better-informed financial decisions. If the company's response is generic, the database-reviewing-consumer will be unable to determine: (1) whether the complaint was valid, and (2) whether the company's response was sufficient.

Publicly posting the narrative and company's response could also have a chilling effect on communication between the consumer and the financial services company quite unintentionally. Experience with complaints made in social media and other public forums suggest that consumers who opt to make their consumer narrative public provide less detail in the complaint. This will make it more difficult and time-consuming for companies to respond, particularly within the 15-day timeframe. Also, if consumers want their narrative to be public, but are worried about their privacy, they could fill out the form using made up names and contact information, making it impossible for companies to respond accurately.

In addition, technical issues with the Consumer Complaint Database could also lessen communication between the consumer and the financial services company. For example, the Proposed Policy Statement does not discuss whether companies and consumers will be able to edit their public narratives. A consumer may wish to add to the narrative after hearing back from a company. Or, a company may want to change the response once it receives additional details from the consumer. If the responses cannot be edited, the consumer may miss important information. In another example, the character limits in the company narrative response box could force companies to provide less detailed responses. Currently, to avoid the character limits, some AFSA companies respond to complaints by writing a letter to the consumer and posting it as an attachment. The Proposed Policy Statement did not say whether or not attachments could be made public. Trying to respond sufficiently to a complaint in a limited number of characters would be difficult and likely lead to consumer confusion. Also, the Proposed Policy Statement

[23] 15 U.S.C. § 6801 – 6809.
[24] CMC Letter, pp. 22 – 24. Companies may also be legally restricted by other federal and state statutes. Additional time is needed to complete a thorough analysis.

says that consumers can revoke their consent to make the narrative public, but does not say if companies may also revoke consent.

4. *The Proposed Policy Statement does not address the significant and unwarranted brand, reputational, and litigation risk to financial services companies.*

AFSA understands that the first part of the CFPB's mission is helping consumers. We agree that it is important for markets to work for consumers. But in order for markets to work for consumers, they must also work for the companies. However, the Proposed Policy Statement barely addresses how making consumer narratives public would affect the companies regulated by the Bureau. The reputational risk and litigation risk companies would incur by disclosing the consumer narratives is real and potentially extremely harmful because: (a) the company's response cannot actually be made public, (b) there is no guarantee that the company response will be posted at the same consumer narrative, (c) there are no guidelines as to what can be included in the narrative, and (d) of the risk of "proportional divergence."

a. The company's response cannot actually be made public.

Making the consumer narrative public will not improve the functioning, transparency, and efficiency of markets for financial products and services unless the company's response can also be made public in full – which is impossible. The opportunity for companies to respond to consumer narratives is so limited as to be practically non-existent. Without a real opportunity to respond, there is a serious reputational risk to companies.

In the Proposed Policy Statement, the CFPB asserts that the related company will be given the opportunity to submit a narrative response to the consumer narrative for inclusion in the Consumer Complaint Database. The CFPB adds that the company will be instructed not to provide direct identifying information in its public-facing response and that the CFPB will take reasonable steps to remove personal information from the response.[25]

The CFPB does not explain if it will remove non-personally identifiable information that, nonetheless, is private and otherwise protected, such as the consumer's financial information or the company's experiential information on the consumer. For example, a consumer could complain that her car was repossessed. The company, after looking into the complaint, finds that the consumer's car was repossessed because she had not paid her loan for several months. Could the company's narrative response include the information that the consumer had not paid? Or will that part of the response be edited out by the CFPB, leaving the uninformed reader to think that the creditor derives pleasure out of repossessing cars? In another example, a consumer could complain that he was denied a credit card. Could the company respond publicly that he did not get a credit card because his credit score was too low?

If the CFPB removes that crucial information from the company's response, the response becomes incomplete and potentially misleading, which defeats the purpose of publishing it. The information in the response might be personal in nature, but such information may be quite

[25] "Disclosure of Consumer Complaint Narrative Data; Notice of Proposed Policy Statement," 79 Federal Register 42765 (23 July 2014), p. 42768.

necessary in order to adequately respond. Readers of the unedited narrative and a response which has been edited, perhaps heavily, are not likely to get the entire, unvarnished truth. Even worse, there would seem to be an inherent conflict of interest if the editor of the creditor's response is an employee of a governmental agency whose stated purpose is to assist consumers like the complainant in their alleged grievances with companies like the creditor.

Even if the CFPB stated that it would not edit a company's response, financial services providers are legally prohibited by GLBA (and possibly other state and federal statutes) from publicly disclosing certain information about a consumer's account or experience with a lender, such as non-payment or credit score. With those prohibitions, the company could not respond in a meaningful way.

A company's reputation is at risk if a consumer narrative is posted and the company cannot respond. For example, a narrative could include a complaint about an elderly consumer claiming "discrimination" as a reason for being declined for credit. However, the real reason the consumer was declined could be that the consumer's credit score was low. The press and others would note that a discrimination claim against the financial services company, unfairly damaging the company's reputation. Although the company has, in theory, an opportunity to respond, the company could not actually post a response stating that the consumer was denied credit because of the consumer's low credit score.

In order to allow the company to respond in a meaningful way, the consumer and the CFPB would have to include a liability waiver for the company to disclose private information about the consumer. However, it would be impossible to write the waiver in such a way as to adequately protect the company from all the possible claims and legal risk the company could be subject to under both federal and state privacy laws. Neither the CFPB nor the companies would have the ability to monitor the waivers and whether such waivers have been revoked by consumers. Additionally, companies would still be vulnerable to private rights of action. Moreover, since the CFPB has no ability to verify and validate that the complaint is coming from an actual customer with a relationship with the named company, any attempt to obtain a waiver is jeopardized. If the CFPB cannot validate the status of the party filing the complaint, attempts to obtain a waiver are meaningless.

Thus, a company is, for all intents and purposes, restrained from writing an informative narrative response debunking or responding to the complaint. The company would be forced to provide a generic response which would likely have so little information that it will not be useful or valuable to the consumer making the complaint or to readers. The generic response may even be misleading because the details have been omitted and what is left does not address the real issues.

The CFPB could allow the company to publish two responses – one publicly and one for the consumer making the complaint. However, that possibility still means that consumers reading the responses are not getting all the information they need. Also, a generic public response prevents the company from really correcting the record. In addition, putting out one response that is scrubbed for the public and a second response for the consumer is very burdensome.

b. The Proposed Policy Statement does not specify that the company's narrative response is posted at the same time as the consumer's narrative.

The press release announcing the Proposed Policy Statement says that in most cases, the company's narrative response would appear at the same time as the consumer's narrative so that reviewers can see both sides at the same time. We agree that reviewers should be able to see both at the same time. It would be unfair to a company's reputation if a narrative was posted days before a company's response. However, the Proposed Policy Statement includes no such promise. Not only is it helpful for consumers to see both complaint and response together, but it would be inherently unfair for consumers to see a complaint for which the company has not yet been able to investigate and respond. In the newspaper business, everyone sees the shocking Page One allegations and reads the story. No one reads the retraction published three days later and buried on page 12.

The Proposed Policy Statement also does not address follow-up requests that come from the CFPB. It is unclear if the follow-up responses will be added to the company's initial public response or if these additional communications between the company, consumer, and Bureau will not be public.

c. The Proposed Policy Statement does not include any consumer narrative guidelines.

As anyone who has ever read reviews or comments online knows, an open forum, particularly one in which the comments are posted anonymously, can lead to any number of obscene, pornographic, vulgar, degrading, hateful, profane, defamatory and abusive remarks. As one Washington Post article put it, "online comments, scourge of the Internet."[26] The article goes on to state, "But a growing number of Web sites are reining in the Wild West of online commentary. Companies such as Google and the Huffington Post are trying everything from deploying moderators to forcing people to use their real names to try to restore civil discourse. Some sites, such as Popular Science, are banning comments altogether."[27] It is almost inconceivable that the CFPB would publish consumer narratives on its Consumer Complaint Database, particularly since the narratives are posted anonymously, without including guidelines as to what can be included in the narratives and how the CFPB would handle inappropriate comments (such as foul language, racist slurs, or homophobic comments). Inappropriate comments further expose the target companies to unwarranted risk and exposure. The CFPB also does not state what it would do if it suspects a company is submitted fraudulent complaints against a competitor.

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[26] Ortutay, Barbara, "Web Sites Try to Clean Up Cesspool of Online Comments." Washington Post. Dec. 27, 2013. http://www.washingtonpost.com/business/economy/web-sites-try-to-clean-up-cesspool-of-online-comments/2013/12/27/520f11a4-6e6d-11e3-a523-fe73f0ff6b8d_story.html

[27] *Ibid.*

d. The Proposed Policy Statement creates "proportional divergence" which leads to a false or misleading impression of the company and/or its services.

Proportional divergence is the concept of using a singular narrative to define a company. For example, a company conducts over 1,000,000 financial transactions per year with consumers. 999,999 of those consumers are satisfied with their relationship. One consumer posts a complaint and it is posted to the CFPB website. Consumers reviewing the CFPB's website would not be aware that 999,999 consumers were satisfied. They would see the complaint and assume that the issue was indicative of the company's practices as a whole. Such proportional divergence is inherently and unavoidably unfair to the business and should not be espoused by the CFPB.

II. ***Consumerfinance.gov* is simply not the same as *SaferProducts.gov* or *SaferCar.gov.***

The CFPB mentions in its press release for the Proposed Policy Statement that consumers often go online to research products before they make a decision to purchase. The CFPB references the Consumer Product Safety Commission's ("CPSC") SaferProducts.gov and NHTSA's SaferCar.gov, as databases with narratives that have helped inform consumers about a range of products. The CFPB is trying to empower consumers with the same kind of information, but for financial products and services.

The problem with the comparison is that information about a consumer's experience with a financial product or service is covered by a myriad of privacy restrictions, including GLBA. No such privacy concerns apply to complaints submitted to SaferCar.gov or SaferProduct.com.

As an example, here is a consumer narrative from CPSC's database:

> "My 10 year old daughter was using the karoake [sic] machine at home and went to unplug the power cord from the back of the unit, but the cord snapped in her hand, giving her an electric shock.
>
> There was a flash of red, severe pain and her hand was blackened all over by soot afterwards. She was scared and upset by the incident, and quite shaken for a few hours afterwards. The electical [sic] burn will take a while to heal.
>
> Luckily she was not seriously hurt because she was able to drop the cord quickly, but it worries me that if the same happens to another customer the outcome could be very serious indeed."[28]

And here is the company's response:

> "(8/7/2014) QFX, Inc: We apologies for any inconvenient [sic] this incident may have caused for the [REDACTED] Family. Upon receipt of your letter we ran a thorough investigation of all models equipped with the same wire. The investigation indicated that we never had any such incident on any of our products equipped with this kind of cable. QFX has sold thousands of different devices which use this AC cord we without any report of any incidents. Our products undergo an intense inspection at the manufacturing plant prior to shipment. Especially the AC cords and other safety points are checked thoroughly.

[28] http://www.saferproducts.gov/SPDB.zip

> Based on the picture that was attached to the letter, it seems that the AC cord has been cut off by a sharp object from the point that the cord is connected to the plug. However it is hard to determine that for sure based on the picture. This does not seem like a manufacturing defect, however it could have been caused by the way the consumer may have grabbed the cable to pull the plug out repeatedly, instead of handling the plug itself to remove it from the socket.
>
> We believe this has been an isolated incident. QFX always cares about safety of its customers and will continue to do that carefully. As a courtesy to the customer QFX will ship another cord to replace the damaged unit without admission of any wrongdoing on its part."[29]

Because the complaint did not require divulging non-public personal financial information of the complainant, the responding company was able to reply fully to the complaint. Our member companies would very much like to provide a complete and detailed response to a complaint submitted in the Consumer Complaint Database. However, as discussed above, due to privacy laws and regulations, no AFSA company is able to provide a complete and detailed response, even a redacted response. Even admitting that the consumer was a customer could be a violation of privacy laws. The only public response a company will be comfortable posting publicly was, "We have received your complaint," which is not useful information and would likely leave the wrong impression with other consumers that the company is not being responsive. While AFSA members can and usually do submit detailed and robust responses to their customers, they can only do so privately and will not be able to do under the Proposed Policy Statement.

Using this example, the only information from QFX, Inc.'s response that had to be redacted was the family's name. To comply with privacy laws, finance companies would often have to redact information crucial to the response, e.g. the borrower's credit score, the fact of non-payment of the debt, the consumer's payment history, etc.

III. The CFPB must address certain legal challenges presented by the Proposed Policy Statement.

When Congress enacted the Dodd-Frank Act creating the CFPB, it specified that the primary functions of the Bureau include: (1) collecting, investigating, and responding to consumer complaints; and (2) collecting, researching, monitoring, and publishing information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets.

Publishing the consumer narratives is not an enumerated CFPB complaint function. The CFPB has received, and will continue to receive, all consumer narratives. The Bureau will continue to analyze and report on complaints, as directed by the Dodd-Frank Act. However, publication of the consumer narratives is unnecessary to accomplish the CFPB's stated objectives.

There were Congressional directives to CPSC and NHTSA, but not the CFPB, to create public databases. The legislative history of the CFPB's creation shows no intent of allowing the publication of a de-identified public database. Indeed, the publication of consumer narratives conflicts with the legislative history of the CFPB's creation. Congress debated the privacy aspects of the CFPB when it was writing the Dodd-Frank Act. At first, legislation would have

[29] *Ibid.*

given the CFPB very broad authority to collect personal information, and would have required the CFPB to publish it after removing personally identifiable information. After debating the privacy issues, Senator Dodd supported a Republican amendment to remove the requirement to publish information with personally identifiable information redacted. Senator Dodd stated:

> "[T]he Consumer Financial Protection Bureau will be able to collect information and share it with other regulators. There is nothing new about that at all. But, unlike some of the claims that have been made that this information will be made public or sent to Wall Street—the idea is that this new government entity will be collecting private information about your finances and making it pubilc [sic], that is not true either. That is false. Strong privacy protections are included in our bill to make sure that proprietary, personal, or confidential consumer information is kept just that—private."[30]

It has not been shown that a governmental agency can add value by effectively nationalizing a public-facing narratives database for one type of consumer complaint – those about financial products – at taxpayer expense.

There is no evidence that other avenues of communication and social media have failed to display complaints about financial services providers. There is thus good reason for Congress not to have chosen to spend taxpayer money to have the government take over this function.

IV. <u>The CFPB should publish select consumer narratives in a quarterly report, instead of publicizing all of them in the Consumer Complaint Database.</u>

The CFPB could accomplish its goals of providing consumers with timely and understandable information about consumer financial products and services in a different, but far more effective manner than publishing all of the consumer narratives in the Consumer Complaint Database.

Each Quarter, the CFPB publishes a summary report of complaints. In that document, the CFPB could include many examples of consumer narratives. These narratives could be verified for validity and accuracy before appearing in the quarterly report. They could also be properly scrubbed so that they do not include any privacy information. We also suggest that the name of the company be omitted. This permits the CFPB to meet its goal of providing consumer narratives that are accurate and valid without needing a company response that would be impossible to provide.

[30] 156 Cong. Rec. S3003 (daily ed. April 30, 2010) (statement of Sen. Dodd).

V. Conclusion

The CFPB is a relatively new government agency that has had to create itself from the ground up in a short period of time. This rapid expansion of a new proposal into an area of the consumer/provider relationship is both unnecessary and unwarranted and it will create risks that run counter to one of the CFPB's main principles – to provide consumers with useful and accurate information. The CFPB has shown its resolve to correct patterns of consistent and repeated practices that clearly harm consumers. This is right in line with our members' belief that ensuring the goodwill of our customers is what makes a business a success. This Proposed Policy Statement contradicts that important principle and therefore the CFPB should not finalize it.

Consumers have an overabundance of platforms in which to lodge narrative complaints on the internet and through social media. There are more than enough opportunities for consumers to provide public comment on their experience with companies they do business with, including their financial institutions. By publishing unverified or unsupported complaint narratives that are in no way reflective of a company's actual historical experience with consumers in general or in how they resolved specific complaints, the CFPB risks becoming nothing more than another addition to the hundreds of undocumented and unaccountable blogger posts that post anything they want, regardless of the truth – while at the same time giving the imprimatur of more reliability or accuracy because it is "the government." There are simply too many significant problems and risks that cannot be overcome with publicly disclosing consumer narratives that cannot be adequately addressed. We hope the CFPB will come to the same conclusion.

We look forward to working with the CFPB on this issue. Please contact me by phone, 202-466-8616, or e-mail, bhimpler@afsamail.org, with any questions.

Sincerely,

Bill Himpler
Executive Vice President
American Financial Services Association