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September 22, 2014

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

Submitted electronically to: <http://www.regulations.gov>.

Re: Request for Public Comment Regarding the Disclosure of Consumer Complaint
Narrative Data
Docket No CFPB–2014–0016

Dear Director Cordray:

AARP¹ appreciates the opportunity to comment upon the Consumer Financial Protection Bureau's (CFPB) proposed policy statement for the disclosure of consumer complaint narrative data. The CFPB was established in the wake of the financial crisis to protect consumers, in part by increasing transparency and competition in the consumer financial market. Among other provisions, AARP supported the requirement that the CFPB collect, monitor, and respond to complaints regarding consumer financial products and services.²

Publicly reported consumer complaint databases are powerful and effective regulatory tools. They empower knowledgeable, proactive consumers, encourage business competition based on consumer feedback, and assist regulators and enforcement agencies to identify problems and trends in the marketplace. Having timely information derived from consumer complaints is useful in tailoring enforcement and supervisory priorities, ferreting out abuse, and preventing future harm to consumers from bad practices that are illuminated through consumer complaints.

Making consumer narrative data available to the public supports and enhances the value of the database as a tool to protect consumers. AARP strongly supports giving

¹ AARP is the largest nonprofit, nonpartisan organization representing the interests of Americans age 50 and older and their families.

² 12 U.S.C. § 5493(b)(3).

consumers the option to permit their complaint narratives to be included in the publicly disclosed data after it is scrubbed of personally identifying information. Specifically, AARP urges the CFPB to:

- Allow consumers to decide whether their narrative information will be shared publicly;
- Inform consumers up front that they have the option to share publicly their narrative information and clearly describe to consumers the benefits and risk of sharing it;
- Permit the company to also provide a narrative that summarizes the response given directly to the consumer, but not by disclosing the actual company response to the complaint, which may contain too much sensitive information. The CFPB should provide guidance to assist businesses regarding what they may properly include in a response, consistent with applicable privacy standards. Making such guidance available to businesses and consumers, perhaps in the form of a “bill of rights,” will also assist to educate consumers about their privacy rights and inform consumers about the potential risks of sharing their narrative publicly;
- Include zip codes and information about a consumer’s protected class, such as race, national origin, gender, or other protected status in the public information. While such information increases the potential to re-identify the information, it provides invaluable information necessary to identify certain trends and violations of various consumer protection laws. Without such data, regulators and third-party researchers will be unable to draw meaningful conclusions about the significance of patterns of complaints. Companies may also benefit from monitoring such information, because it provides them with an independent means to evaluate and improve the actual outcome of their policies, practices and procedures. If necessary to protect against re-identification, it may in limited circumstances be necessary to limit disclosure of geographic and protected class information, but such limitation should be exercised only where the population is so small that it would provide a significantly increased statistical risk of re-identification. In such cases, the information should, at a minimum, be made available to researchers subject to a use agreement prohibiting disclosure of personal information, rather than withheld altogether.

1. **Complaint Narratives Provide Essential Information and Context About Consumer Complaints.**

Publicly accessible consumer complaint databases are strongly associated with improved quality and safety outcomes in a variety of regulatory contexts. The National Highway Transportation Safety Administration, Food and Drug Administration, Centers for Medicare and Medicaid Services (CMS), and the Consumer Product Safety Commission each rely on public feedback, including consumer complaints, which help them to advance their respective missions.

In particular, public complaint databases empower consumers to seek satisfactory resolution of their concerns in a manner that also benefits other consumers by driving market correction: businesses will strive to compete with each other on their consumer protection record in addition to the price and features of products or services they offer, or sometimes more importantly, the size of their advertising budgets. Knowing that public complaints will be reviewed by consumers, competitors, and regulators encourages prompt complaint resolution and provides regulators and businesses alike with unique insight into consumer experiences with regulated products.

For example, researchers evaluating nursing home quality have found that “[w]ithout public reporting, consumers may have little information to help them differentiate quality among providers, giving providers little incentive to compete on quality. Public reporting enables consumers to choose highly ranked providers [].”³ Consumer complaints also influence and even assist businesses to learn of product defects or dangers. “Complaints can be a good early warning system” which offers them a “huge competitive advantage if [a business] leverage[s] them.”⁴

The CFPB’s consumer complaint process includes consumers making a written description or narrative of the dispute, which the CFPB’s Consumer Response Team reviews. If it meets the minimum standards established by the CFPB, it is referred to the company, which provides a detailed written response to the consumer. The CFPB’s consumer database has already proven to be successful in helping to identify complaint trends and potential consumer protection issues. Between April 1, 2013 and March 31, 2014, the CFPB received approximately 192,200 consumer complaints across a broad range of products. The CFPB’s Consumer Response Team sent 66% of these complaints to companies for review and response.⁵ Companies have responded to 95% of these complaints and resolved 90% of them, demonstrating the incredible utility of the public complaint database for assisting to resolve consumer complaints.⁶

Currently, the only information available publicly about such a complaint is the type of product, the product provider, a generic description of the issue, and a generic description of the status of the complaint resolution by one of the following

³ Werner R.M. et al., *Do consumers respond to publicly reported quality information? Evidence from nursing homes*, 1, J Health Econ. 50-61 (Jan. 31, 2012), available at <http://www.ncbi.nlm.nih.gov/pubmed/22307033>.

⁴ Steve Cocheo, *Science of the Complaint, Handling Consumer Complaints in the Age Of CFPB, UDAAP and Twitter*, ABA Banking Journal, 30 (June 2012) (quoting, respectively, Virginia O’Neill, senior counsel in ABA’s Center for Regulatory Compliance and Craig Stone, Managing Director at Alvarez & Marsal Financial Industry Advisory Services).

⁵ CFPB, *Semi-Annual Report*, 21 (May 2014), available at http://files.consumerfinance.gov/f/201405_cfpb_semi-annual-report.pdf.

⁶ *Id.*

categories: dispute is in progress, closed with explanation, closed with non-monetary relief, or closed with monetary relief. Such generic descriptions of the dispute or issue do not provide sufficient detail to permit consumers, regulators, and third-party researchers to determine trends or common issues. Adding the consumer narrative to the publicly disclosed information adds important context to consumer complaints and provides several benefits that improve the utility of the database.

Providing public access to complaint narratives and a summary of the company response makes the database more understandable, and therefore more valuable to consumers and others. For example, the CFPB has reported that the most common consumer credit card complaint was billing disputes, which revealed a recurring theme that consumers failed to dispute the billing charge within the required 60 days.⁷ But a consumer reviewing only the publicly available database would be unable to draw this conclusion. The public information would reveal only that a consumer had a billing dispute that the company closed with explanation. Without public access to the narrative and a summary of the company response, only the CFPB could identify the root cause of the complaint or recognize the important trend. Providing the narrative and company response makes the database more useful for state Attorney Generals, watchdog groups, other companies looking to better compete in the market, and consumers trying to educate themselves about common financial pitfalls and disputes.

Having access to more information provides consumers with additional, invaluable tools that may encourage them to become more proactive to educate and protect themselves. Consumers who can read the narratives and the responses may be more likely to understand particular types of complaints so they can be alert to the issues raised before they make their own decisions. For example, it may help them understand the importance of reading and understanding the fine print before they enter into a contract, or of disputing a bill within the proper time frame. It also encourages consumers to report problems that have the potential to impact a large number of consumers in similar ways, which in turn provides a more complete overall picture of the consumer protection trends that need to be addressed, either by voluntary steps taken by the business or industry or through an enforcement action.

Indeed, a company can use the information gleaned from disclosing the complaint narratives as an integral part of their routine risk management and quality control procedures. A company's management would have the opportunity to learn about internal problems through consumer complaints, and correct them early and voluntarily. Moreover, companies can use their own responses to help educate consumers about their respective rights and obligations. Such open and honest communication may help reduce consumer complaints that purportedly arise from misunderstandings about what duty the company owes the consumer or how the consumer can best address similar concerns in the future.

⁷ CFPB Semi-Annual Report, May 2014, at 24, available at http://files.consumerfinance.gov/f/201405_cfpb_semi-annual-report.pdf.

Moreover, contrary to the concerns expressed by regulated entities—that the public nature of the complaints will be used to extort positive resolution for consumers even where it is not justified—the data show that companies resolved only 20 percent of the complaints in the consumer’s favor.⁸ Clearly, the public database is assisting to make financial products and services more transparent and improves a consumer’s meaningful access to their financial product provider, without extorting concessions from businesses.

Regulated industries have also expressed concern that making the narratives public will expose them to unfounded and unfair consumer “rants”. To the contrary, making the narratives public will help distinguish those complaints that involve bona fide disputes from those that are more akin to consumer “rants”. In any event, keeping narratives private does not assist companies from limiting rants, because consumers have numerous other avenues to complain publicly, and a first amendment right to do so.⁹ Giving the company the opportunity to respond minimizes the risk of a company being unfairly labeled and more fairly identifies what the actual dispute concerns. Moreover, the fact that the complaint database is operated by a government entity eliminates the possibility that there may be commercial interests at work manipulating the complaints in favor of or against a particular business.¹⁰

Certainly, it is important to ensure that complaints are not made solely to impugn the reputation of a particular company. Complaints should be bona fide and as accurate as possible, i.e., they should correctly identify the business involved in the complaint. Procedures have been implemented to ensure that a business has a fair opportunity to respond to inaccurate or incomplete reports. Thus, such concerns should not be permitted to undermine the benefits obtained from the information included in the public database.

2. Consumers Should Have The Right To Opt-In To Sharing Their Complaint Narratives

As detailed in the proposed policy statement, consumers should have the right to file a complaint without sharing their narrative. A consumer’s desire to keep private disputes from becoming publicly available, regardless of how unlikely re-identification may be,

⁸ CFPB Semi-Annual Report, May 2014, at 44-45, available at http://files.consumerfinance.gov/f/201405_cfpb_semi-annual-report.pdf (finding that 8,620 of the 120,700 complaint responses provided monetary relief to the consumer).

⁹ See Levy, Paul, “Levitt v. Yelp: Business Claims of Yelp Extortion Rejected,” Public Citizen Consumer Law & Policy Blog, Sept. 9, 2014, *available at* <http://pubcit.typepad.com/clpblog/2014/09/levitt-v-yelp-business-claims-of-yelp-extortion-rejected.html>.

¹⁰ Seave, Ave “When Online Reviews Are Fake: Researchers Identify Which Hotels Have Incentive To Manipulate,” Forbes, Jan. 27, 2014, *available at* <http://www.forbes.com/sites/avaseave/2014/01/27/when-online-reviews-are-fake-researchers-identify-which-hotels-have-incentive-to-manipulate/>.

should be respected and should not bar the consumer from the consumer dispute resolution process. An opt-in system allows consumers to choose whether or not to share their information.

The system should be designed to encourage consumers to give detailed information in their complaint. The more information the CFPB and the company have, the easier it will be to resolve the dispute. Imposing a requirement that a complaint may not be filed unless the narrative will be disclosed would be a barrier that may discourage consumers from reporting. Opt-in is preferable to opt-out because the default option is the option that best protects the consumer's privacy.¹¹ The opt-in system provides the right balance between giving consumers the ability to share their concerns with the public and respecting the privacy of the consumer if they wish not to make that information public.

3. Consumers Should be Informed That They Can Choose to Share Their Complaint at the Beginning of the Complaint Process to Avoid Confusion and Encourage Consumers to Report Disputes.

AARP strongly recommends that consumers be informed that they have the option to share their complaint narrative publicly, and that this information be provided to them at the beginning of the complaint process as well as at the time they actually submit their complaint. Knowing at the outset that they have the option to share their complaint narrative publicly may change how a consumer chooses to draft that section of their complaint. Telling consumers only at the end of the process may cause consumers to be frustrated and may discourage complaints. The consumer should not have to provide their information without being informed exactly what they can expect from the process. It may be useful to open the complaint landing page with a clear statement, akin to a "bill of rights," regarding what a consumer seeking to file a complaint can expect.

The actual check box giving consent to share the narrative should be placed immediately below the narrative section to re-emphasize that that is the information to which the consumer is consenting to share. If the opt-in box is earlier or later in the complaint filing process, consumers may be confused about what information will be shared, creating a disincentive for sharing their experience, or worse, confusion that leads to sharing without consent.

The consumer complaint database promotes transparency in the financial markets. The CFPB should be equally transparent with consumers when they are trying to report a complaint by explaining the opt-in capability and the associated privacy risks at the beginning of the form.

¹¹ Comments of the World Privacy Forum to the Bureau of Consumer Financial Protection Regarding Disclosure of Certain Credit Card Complaint Data, CFPB-2011-0040, Jan. 30, 2012, available at <http://www.worldprivacyforum.org/2012/01/public-comments-january-2012-regarding-disclosure-of-certain-credit-card-complaint-data/>.

4. **The Company Response Should Be Related to the Consumer Narrative But Should Not Include Detailed Personal Information.**

Much like the consumer narrative, public access to a company narrative response could be incredibly useful for understanding the context of the dispute and any miscommunication or policy changes that might be common across a product line or in a certain region. The limited response currently available on the database does not give a complete picture for analysis or identification of trends. Also, as discussed above, the company should be able to present its side of the dispute in order to clarify misunderstanding and to defend against unfair or unfounded attacks on its products and policies. The fact that consumer complaints receive prompt responses is itself valuable information for consumers looking into financial service providers with good customer service reputations. Providing public access to the narratives from both perspectives enables consumers and others to make their own determinations about the credibility and usefulness of each.

The CFPB should be encouraging companies to respond to consumer complaints in as much detail as possible, including referencing product agreements, account numbers, relevant and controlling dates, and previous transactional history. Such detailed information in the company response must be scrubbed before it is publicly disclosed. The CFPB should take responsibility for scrubbing the responses, as it proposes to do with the narratives.

To the extent companies will be held responsible for information in a response that is disclosed publicly, they need detailed guidance regarding the bounds of their obligations. Otherwise, companies may have a disincentive to give adequately detailed responses to consumers for fear it will open them to liability for violating privacy requirements.

5. **Zip Codes And Protected Class Status Information Should Be Open To the Public.**

Zip code data is incredibly important for identifying trends and determining regional hot spots. Researchers and watchdog groups frequently overlay geographic and other data to demonstrate patterns or trends that might otherwise go unnoticed. As an analytical tool, zip code designations provide far more targeted information than do census block groups, metropolitan statistical areas, or statewide data groups. Such information should be disclosed publicly in addition to the narratives.

It is important to note that extensive amounts of personal information is already being gathered and analyzed by big data brokers and large companies. Consumer privacy expectations may already be far out of step with reality. Clearly, scrubbing the narratives of information that may increase that risk is essential to prevent, to the extent possible, the re-identification of the data. But the proper question should be whether sharing the complaint narrative publicly exposes consumers to greater risk of re-identification *compared to the risk that exists if narratives are not publicly disclosed.*

AARP believes that consumer privacy concerns relating to re-identification of data are unlikely to be altered by the CFPB making scrubbed narratives public. The company will receive all of the consumer information with the consumer complaint, regardless of whether the consumer chooses to share the narrative or not. The fact of the complaint being made, what it relates to, how it is resolved and what that information may suggest about a particular consumer is already part of the big data machine. The CFPB should further study and protect consumers from the impact of big data collection, including ensuring that consumers have the opportunity to learn what information has been collected about them and sold, and the opportunity to correct inaccurate information.

Conclusion

AARP appreciates the opportunity to provide these comments about the disclosure of consumer complaint narrative data. If you have any questions, please feel free to contact Mary Wallace on our Government Affairs staff at 202-434-3954 or mwallace@aarp.org.

Sincerely,

A handwritten signature in black ink, appearing to read "David M. Certner". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David M. Certner
Legislative Counsel & Legislative Policy Director
Government Affairs