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

September 22, 2014

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

**Re: Comments on Notice of Proposed Policy Statement:
Disclosure of Consumer Complaint Narrative Data
Docket No. CFPB-2014-0016**

Dear Ms. Jackson:

MFY Legal Services, Inc. (“MFY”) submits the following comments on the Notice of Proposed Policy Statement regarding disclosure of consumer complaint narrative data by the Consumer Finance Protection Bureau (“CFPB” or “the Bureau”) (Docket No. CFPB-2014-0016).

MFY supports CFPB’s proposed policy to provide consumers with the choice to release their complaint narratives to the public. This policy will assist CFPB in fulfilling its mandate to create a fair, transparent and competitive consumer financial products and services market. In that regard, we similarly support CFPB’s proposed policy to release a company response narrative. However, MFY believes that full transparency and service in the public interest can only be achieved by releasing these narratives and that company response with the consumer’s five-digit zip code.

MFY envisions a society in which no one is denied justice because he or she cannot afford an attorney. To make this vision a reality, for over 50 years MFY has provided free legal assistance to residents of New York City on a wide range of civil legal issues, prioritizing services to vulnerable and under-served populations, while simultaneously working to end the root causes of inequities through impact litigation, law reform and policy advocacy. We provide advice and representation to more than 8,500 New Yorkers each year. In 2005, recognizing our clients’ growing demand for legal representation and information about debt collection and other consumer issues, MFY launched its Consumer Rights Project. Three years later, in 2008, we created our Foreclosure Prevention Project to battle the repercussions of the subprime lending boom and assist our clients in saving their homes with mortgage modifications. Through

these two projects, we see first-hand the abuses and unfair practices that underlie the types of consumer complaints filed with the CFPB. It is this on-the-ground perspective that informs these comments.

The Proposed Consumer Opt-in Policy Allows Essential Information to Be Quickly Released to the Public While Retaining Consumers' Privacy

In the past, MFY has submitted Freedom of Information Act ("FOIA") requests for the consumer complaint narratives. CFPB has denied these requests on privacy grounds. While MFY does not concede that CFPB's FOIA denials were proper, we do support the current proposal to give consumers the choice to release their narratives to the public.

The current compromise – which allows consumers to “opt-in” to release their narratives in the public database – properly balances consumers' privacy with CFPB's mandate to inform and protect consumers pursuant to 12 U.S.C. § 5511(b). The compromise will also enable this information to reach the public quickly without resorting to time-consuming FOIA litigation. MFY thus endorses CFPB's proposed policy to provide consumers the choice to make their complaint narratives public.

A Majority of Consumers Will Likely Opt-In as Long as CFPB Makes Clear in the Opt-In Language that the Narratives Will Be Used to Assist Other Consumers

In serving over 800 consumers and homeowners in 2014 alone, MFY's Consumer Rights and Foreclosure Prevention Projects have assisted our clients in their fight against abusive and predatory lending and debt collection practices. Our experiences have taught us that most consumers and homeowners want to ensure that other people do not experience the difficulties that they have encountered. It is that spirit of community that causes us to believe that the majority of consumers will elect to make their complaint narratives public if they are properly informed that such a choice will help others.

As a result, we encourage CFPB to include in the opt-in consent a statement highlighting that making the complaint narrative public may assist the many other consumers facing the same issue. We also encourage CFPB to include language in the opt-in consent stating that non-profit advocacy organizations may use these narratives to fight abusive behavior on a large scale.

We believe that such language in the consent is important because we find that consumers have increasingly lost faith in regulatory responses to their complaints. This is particularly true of the homeowners we have served. Most mortgage modifications can only be obtained through months if not years of struggle with the mortgage servicer. Although government-sponsored modification programs like the Home Affordable Modification Program ("HAMP") and the National Mortgage Settlement ("NMS") establish regulations that the mortgage servicers are required to follow, we find that the vast majority do not abide by these guidelines and there has been little government enforcement in that regard. Unfortunately, homeowners receive little to no relief when they file complaints to one of the government departments (*e.g.*, HAMP Solution Center, Fannie Mae, or Freddie Mac).

While our recent experiences have demonstrated that consumers have fared better when filing complaints with CFPB, due to years of ineptness by other government agencies and departments, most of our clients will likely place more trust in not-for-profit organizations committed to combating abusive practices than in their government.

Thus, we encourage CFPB to include the following or similar language in its opt-in consent instructions:

Choosing to make your complaint narrative public can help other consumers avoid the same difficulty you experienced. Non-profit consumer advocacy organizations, academics and the media are likely to analyze publicly-submitted consumer complaint narratives in order to expose patterns of behavior by either the industry or particular companies. They may be able to fight potentially abusive behavior on a national scale to ensure that all companies follow the law. Again, CFPB will take all reasonable steps to ensure that all personally-identifying information is removed from your narrative before it is made public.

Consumers Can Only Make Informed Decisions if the Complaint Narratives Are Publicly-Available

Making consumer complaint narratives publicly available furthers CFPB's mission to provide consumers with "timely and understandable information to make responsible decisions about financial transactions." 12 U.S.C. § 5511(b)(1). Currently, the consumer complaint narrative database only provides generalities of a particular complaint. For example, private student loan complaints are vaguely categorized into one of three categories: (1) getting a loan (complaints concerning denials, confusing advertising or marketing, sales tactics or pressure, financial aid services, recruiting, or fraudulent loans); (2) can't repay my loan (complaints concerning deferment, forbearance, default, bankruptcy, payment plan, or refinancing); or (3) dealing with my lender or servicer (complaints concerning making payments, getting information about the loan, or managing the account).

These nebulous descriptions are insufficient for consumers to make informed decisions about a financial product or service. To the contrary, by providing only vague complaint subcategories, CFPB undermines its own goal to serve as a resource for consumers. Most of the clients MFY serves have at least one full-time job if not two. Their time is limited and likely they will not use a website that provides limited information like the CFPB's current complaint database. Most consumers are looking for more nuanced descriptions to make a decision, which they can find on other websites. For example, "Chase-Sucks.com" has an active forum where individuals openly discuss issues they are having with the bank. *See* <http://www.chase-sucks.com/forum/>. These are the types of narratives – meaningful and descriptive – that our clients want before they make a decision about a financial product. Thus, CFPB's proposal to permit consumers to choose to release their complaint narratives to the public can provide consumers with the information they seek.

As attorneys who have worked directly with hundreds of clients, MFY knows that meaningful, descriptive complaint narratives will not confuse consumers. On the contrary, providing only a

few broad complaint subcategories obfuscates the precise nature of any particular complaint. Release of the narratives will add clarity and detail to consumers' understanding of particular financial products and services.

The Current CFPB Quality Control System Guarantees that the Complaint Narrative Database Will Not Become a Rumor Mill

While release of the consumer complaint narratives risks that a few consumers will attempt to publish false complaints, CFPB's carefully-planned current quality control system ensures that only genuine consumer complaints are posted to the public database. As CFPB has explained in prior Notice of Final Policy Statement, *see, e.g.*, Disclosure of Certain Credit Card Complaint Data, 77 Fed. Reg. 121 (June 22, 2012), the Bureau removes duplicate complaints, verifies that a complaint is made from the actual consumer or his or her designated representative, and provides the company with 15 days to dispute the authenticity of the complaint before the complaint is publicly posted to the database. We encourage CFPB to continue this quality control procedure, minimizing the risk of false complaints.

Furthermore, any risk that the complaint narratives will be treated as mere rumors is belied by the fact that the greater the number of narratives published, the more readily a consumer can determine on his or her own the believability of the narrative. One outlier complaint about a single issue will not carry as much weight as the same, repeated complaint against the same company from different parts of the country. In fact, it is only through the publication of the narratives that consumers can make these determinations. At MFY, when we hear the same complaint from many consumers, we know that there is likely a systemic issue that needs to be addressed.

Similarly, the more that different consumers from across the nation report the same issue, the more their claims are validated.¹ Not only is this information critical to future consumers, but it also enables CFPB and consumer advocacy groups reviewing the data to more efficiently use their limited resources.

Publicly-Available Complaint Narratives Serve the Public Interest Because Consumer Advocacy Groups Will Be Able to Discern Patterns of Potentially Illegal Behavior

Another part of CFPB's mandate is to "make public such information obtained . . . as is in the public interest" 12 U.S.C. § 5512(c)(3)(B). That public interest also extends to legal services non-profits such as MFY. Between its Consumer Rights Project and its Foreclosure Prevention Project, MFY currently has five staff attorneys representing consumers. In the first nine months of 2014, the two projects assisted over 800 consumers and homeowners.

¹ Aggregating complaints in order to validate them is not unique to the consumer context. In her book *A Problem From Hell: America and the Age of Genocide*, U.S. Ambassador to the U.N., Samantha Power, has documented the failed policy of ignoring refugees' claims of genocide. As Power points out, although these claims of genocide cannot be proven, as more and more refugees begin to tell the same stories of atrocities, this aggregation begins to validate the allegation. As a result of its prior failed policy, the U.S. government now interviews fleeing refugees to determine if genocide is occurring. *See, e.g.*, Samuel Totten, "U.S. Intervention into the Darfur Crisis," GENOCIDE STUDIES AND PREVENTION (July 2006), available at <http://scholarcommons.usf.edu/cgi/viewcontent.cgi?article=1256&context=gsp>.

MFY's direct legal representation in individual cases is important. But compared to the problem at large, the number of people we are able to directly serve is a drop in the bucket vis-à-vis those who need help. As a result, publishing the consumer narratives allows our lawyers to put our clients' experiences into a national context, uncover patterns of abusive behavior, and bring affirmative litigation to end illegal activity. One major lawsuit can improve the lives of thousands of consumers, allowing legal services non-profits to efficiently use their limited resources. Legal services' role in highlighting patterns of illegal behavior is particularly pertinent in the mortgage servicing sector where consumers largely cannot choose their mortgage servicer.

Currently, the consumer complaint database only categorizes consumer complaints into broad subcategories. For example, mortgage related complaints are categorized as follows: (1) problems when you are unable to pay (loan modification, collection, foreclosure); (2) making payments (loan servicing, payments, escrow accounts); (3) applying for the loan (application, originator, mortgage broker), (4) signing the agreement (settlement process and costs); (5) receiving a credit offer (credit decision/underwriting); and (6) other. Similarly, the number one debt collection complaint of "continued attempts to collect debt not owed" includes subcategories of: (1) debt was discharged in bankruptcy; (2) debt resulted from identity theft; (3) debt was paid; and (4) debt is not mine. Such broad generalities are of little assistance in uncovering patterns of behavior.

Even the CFPB Consumer Response Annual Report² fails to provide a deeper context, offering only a slightly more detailed description. But these cursory descriptions are insufficient to assist legal services and other advocates in achieving their goal of protecting consumers. This is largely due to the fact that some complaints are more costly than others to consumers. For example, compare a three-month delay in reviewing a homeowner for a modification and a 12-month delay. Both are illegal under current regulations but the latter is significantly more expensive to the homeowner because each month late fees, delinquent interest and other charges accrue, ballooning the arrears. With debt collection abuses, collecting on a debt that was previously paid versus collecting on a debt that was incurred as a result of identity theft are very different problems that require vastly different steps toward resolution. In-depth analysis of problems that consumers and homeowners face can only be performed by reviewing the complaint narratives.

To Fulfill Its Mandate to Protect Consumers from Discrimination, CFPB Must Continue to Release the Five-Digit Zip Codes with the Complaint Narratives

Moreover, predatory financial products and services are more often marketed to communities of color than to white communities. *See, e.g.,* Wei Li, Leslie Parris, Keith Ernst & Delvin Davis, *Predatory Profiling: The Role of Race and Ethnicity in the Location of Payday Lenders in California* (Ctr. For Responsible Lending, Mar. 26, 2009), available at <http://www.responsiblelending.org/california/ca-payday/research-analysis/predatory-profiling.pdf>; U.S. Dep't of Housing and Urban Development, *Unequal Burden: Income and*

² Consumer Financial Protection Bureau, *Consumer Response Annual Report: January 1 – December 31, 2013* (March 2014), http://files.consumerfinance.gov/f/201403_cfpb_consumer-response-annual-report-complaints.pdf (last visited Sept. 2, 2014).

Racial Disparities in Subprime Lending in America (April 2000), available at <http://archives.hud.gov/reports/subprime/subprime.cfm>.

In creating the CFPB, Congress recognized this regrettable reality by listing as one of the Bureau's objectives to protect consumers from "...unfair, deceptive, or abusive acts and practices **and from discrimination**..." 12 U.S.C. § 5511(b)(2) (emphasis added). One of CFPB's monitoring mandates is to determine if "the risks of a consumer financial product or service may disproportionately affect traditionally underserved consumers." 12 U.S.C. § 5512 (c)(2)(E).

To fulfill its objective and monitoring mandate, it is essential that the CFPB continue to publish the five-digit zip code of the complaints along with the complaint narrative. It is only through the publication of zip codes that advocacy organizations can ascertain if companies are discriminating against people or communities of color. In addition to affirmatively listing fighting discrimination as part of CFPB's mandate, Congress has also declared discriminatory lending illegal under various federal laws, including the Equal Credit Opportunity Act (ECOA) and in the case of mortgages, under the Fair Housing Act (FHA).

Neighborhoods in the United States, particularly in metropolitan areas, remain segregated along racial and ethnic lines. John R. Logan and Brian J. Stults, *The Persistence of Segregation in the Metropolis: New Findings from the 2010 Census* (Census Brief prepared for Project US2010, Mar. 24, 2011), available at <http://www.s4.brown.edu/us2010/Data/Report/report2.pdf>. As a result, potential patterns of discrimination can be ascertained by analyzing five-digit zip code data. Limiting the zip code to only the first three digits would prevent advocates from being able to identify neighborhoods as predominately minority and thus uncover improper and potentially discriminatory trends. Limiting zip codes to less than five digits would also undermine Congress' directive that CFPB protect consumers from discrimination.

Take for example the difference a three-digit zip code and a five-digit zip code produces in the cradle of New York City's foreclosure crisis: Queens. The zip codes 11357 – Whitestone – and 11368 – Corona – are mere miles from each other but are worlds apart. According to the 2010 Census, Whitestone is 68.7% white; Corona on the other hand is only 5.5% white with a minority population predominately Latino (73.8%).³ Not surprisingly given the racially-based tactics of predatory lending, the foreclosure crisis has not been borne equally by these two neighborhoods. According to New York University's Furman Center for Real Estate and Urban Policy, in 2010, Corona witnessed 224 foreclosure cases filed; Whitestone only 49.⁴ Similar disparities can be found in other neighborhoods of Queens. Howard Beach, 11414, is 76.8% white⁵ and only experienced 71 foreclosures in 2010.⁶ Hollis, 11423, is 90.6% minority⁷ and in 2010 suffered 125 foreclosures.⁸

³ To re-create this data, please go to U.S. Census Bureau, America Factfinder, available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml> and enter the respective zip codes to produce the demographic data for each.

⁴ NYU Furman Center tabulation of data from the Public Data Corporation and the New York City Department of Finance (email on file with authors).

⁵ To re-create this data, please go to U.S. Census Bureau, America Factfinder, available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml> and enter zip code to produce the demographic data.

As the above demonstrates, the differences between neighborhoods – and the type of complaints people will file – will be obscured if CFPB only releases three-digit zip codes.

The voluntary data on discrimination that CFPB currently collects from individual complainants, but does not release to the public, is insufficient to determine potential patterns of discrimination. Individual consumers are not in a position to determine that they are being treated differently from others and might not be aware that they are being discriminated against. Furthermore, disparate impact claims – those based upon a company’s racially neutral policy or practice that has an adverse impact on a particular community – are inherently unknowable to an individual. It is only when data is aggregated that patterns of discrimination and disparate impacts become apparent. Even if CFPB decided to release the self-identifying discrimination data, such data cannot replace the accuracy of consumer complaint narratives with the five-digit zip codes when uncovering potential patterns of discrimination.

To Ensure that All Voices Are Heard, CFPB Must Make Its Online Complaint Form Available in Other Languages

MFY commends CFPB’s efforts to make telephone communications available in 180 languages. Based on our experience, we often find that unscrupulous lending companies, loan modification scammers, and abusive debt collectors prey upon non-English speaking communities. Almost one-third of MFY’s clients speak a language other than English. In fact, in one of our seminal cases, *Brardo v. American Hope Group, Inc.* No. 21154/13 (Sup. Ct. Queens Cty Nov. 13, 2013), MFY uncovered a loan modification scam that preyed almost exclusively upon monolingual Spanish speakers.

Therefore, it is important that CFPB rapidly expand the availability of its services, forms and website into other languages. Currently, CFPB’s online complaint form is only available in English. While CFPB does take complaints over the telephone, some consumers may feel more comfortable submitting a complaint online, especially because telephonic language lines often make the process time-consuming and cumbersome. Because we find non-English speaking communities are often disproportionately targeted for abusive financial products, it is crucial that complaints from non-English communities are also reflected in a publicly-available consumer complaint database. CFPB is required to ensure that its monitoring captures these “traditionally underserved consumers” that may be “disproportionately affected” by predatory financial products and services. 12 U.S.C. § 5512(c)(2)(E).

⁶ NYU Furman Center tabulation of data from the Public Data Corporation and the New York City Department of Finance (email on file with authors).

⁷ To re-create this data, please go to U.S. Census Bureau, America Factfinder, *available at* <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml> and enter zip code to produce the demographic data.

⁸ NYU Furman Center tabulation of data from the Public Data Corporation and the New York City Department of Finance (email on file with authors).

MFY Supports CFPB's Proposed Policy to Include Companies' Responses to Consumers' Narratives Because Such Responses Help Inform Consumers' Decisions

Again, to further its mission that consumers are given as much information as possible so they can make responsible decisions about financial products and services pursuant to 12 U.S.C. § 5511(b)(1), we support CFPB's proposal to permit companies to respond to consumers' narratives in narrative format (subject to redaction of identifiable information). Additionally, such an opportunity allows the banks and other entities to counter any accusations that they deem unfair or damaging to their reputation.

MFY also believes that companies' narratives should be displayed side by side with the original narrative. This enables consumers to gauge how seriously a company takes a particular complaint, which could potentially inform consumers' future decisions. Finally, providing companies the opportunity to publish how they dealt with a complaint could prompt the industry to improve its overall customer service and adherence to regulations. If the CFPB database is used by consumers before choosing a product, companies will realize that they need to better respond to repeat complaints. The company narrative portion can serve as a way for companies to demonstrate their commitment to customer service, ultimately improving the industry overall.

Conclusion

For the foregoing reasons, CFPB should adopt its policy that allow consumers to "opt-in" for the public release of their complaint narratives. We also support CFPB's proposal to give the responsible companies an opportunity to respond with their own narrative. We also strongly urge the CFPB to continue to provide the five-digit zip code with the complaint data.

Thank you for the opportunity to comment on this Proposed Policy Statement. If you have any questions, please feel free to contact us.

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