



January 30, 2012

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

Re: Docket No. CFPB-2011-0040
Disclosure of Certain Credit Card Complaint Data (76 FR 76628)

Dear Ms. Jackson:

OMB Watch welcomes the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB) proposed policy statement on the disclosure of certain credit card complaint data.

As a nonprofit organization dedicated to open government, accountability, and citizen participation since 1983, OMB Watch has long worked for effective disclosure policies to enhance corporate and government accountability. We believe that government has a vital responsibility to ensure the economy works for all Americans by mitigating systemic risks and protecting consumers, public health, and the environment. Experience has shown that sound transparency policies can support the fulfillment of that responsibility.

We applaud the CFPB's proposal as a thoughtful and innovative mechanism to empower consumers, improve market functioning, encourage corporate accountability, and uphold government transparency. Below, we highlight important aspects of the proposal and recommend further actions for the CFPB to take.

Background

OMB Watch has signed on to comments on the proposal submitted by Consumer Action and others. Previously, OMB Watch offered its thoughts on the concept in an April 2011 meeting with Elizabeth Warren¹ and a May 2011 joint letter.² We offer these more detailed comments to highlight additional matters that may be of interest to the CFPB.

¹ Dan Munz, *Keeping It Sunny at the CFPB*, Consumer Financial Protection Bureau, Apr. 6, 2011, <http://www.consumerfinance.gov/keeping-it-sunny-at-the-cfpb/>.

The CFPB's extensive consultation with stakeholders is reflected in the thoughtfulness of its proposal. We appreciate this further opportunity to comment and thank the CFPB for soliciting public comment on the proposal, which will help ensure the policy is well-informed and strengthen its implementation.

Informing Consumers and Improving Market Functioning

The CFPB's proposal would advance the Bureau's statutory purpose of “ensuring that ... markets for consumer financial products and services are fair, transparent, and competitive.”³ Public access to the proposed database of credit card complaints would help consumers make better-informed decisions about financial products. By searching the database directly, or by utilizing research performed on the data by third parties such as academics and journalists, consumers would be able to access important information about a company's practices and customer service when considering establishing or continuing service with a company. As a result, consumers would be better equipped to avoid bad actors or disliked practices. At the same time, we believe that the proposed safeguards would appropriately protect submitters' privacy by excluding their personal information from the database.

Furthermore, public access to the database would mitigate systemic risks by improving market functioning and encouraging corporate accountability. With consumers informed of a company's complaint record, companies that implement abusive practices or are unresponsive to customer concerns could stand to lose business. Companies with strong records, however, could highlight their good performance. Ultimately, transparency could foster competition by encouraging companies to change disliked practices or become more responsive to their customers.

In addition, public access would support the work of the CFPB in maintaining the database. As the CFPB notes in its proposal, public access would enable research by third parties, such as academics and consumer advocates, into trends and patterns – research that could inform the CFPB's exercise of its authority. Moreover, public access would likely raise public awareness of the complaint mechanism, which could in turn generate participation by consumers who might not have otherwise known it was available.

Experience of Other Complaint Databases. Complaint databases can be valuable tools for the public, as demonstrated by other agencies already experienced in them. Both the National Highway Traffic Safety Commission (NHTSA) and the Consumer Product Safety Commission (CPSC) have made consumer product complaints accessible online in order to help the public make informed decisions. Disclosing complaint information allows consumers and their advocates to identify trends and help customers avoid harmful patterns.

² Letter from OMB Watch and other organizations to the Consumer Financial Protection Bureau, May 25, 2011, <http://www.pogo.org/pogo-files/letters/financial-oversight/fo-fra-20110525.html>.

³ 12 U.S.C. 5511.

People look to others' experiences when choosing which car to drive, which appliances to use in their homes, and which toys to give to their children. In practice, complaint disclosure has led to better products and more satisfied customers. For example, increasing accessibility to rating and complaint information via safecar.gov improved NHTSA's New Car Assessment Program by encouraging manufacturers to achieve high ratings and voluntarily increase the safety of vehicles.⁴

In addition to empowering consumers in selecting products, complaint databases can alert the public to undiscovered dangers and flag where greater research into a product or practice is needed. Vehicle complaint information, for example, was critical in discovering and addressing the need for a Firestone tire recall in 2000.⁵ Similarly, CPSC's database helps consumers identify potentially unsafe products before they are recalled and pulled off the shelves. Safety advocates contend that had CPSC's database existed prior to the Graco stroller recall in 2007, parents would have at least been alerted to the risks and could have prevented their children from being harmed or killed.⁶

Complaint databases can help identify harmful and illegal business practices just as they help identify harmful and illegal products. In addition to disclosing complaints to inform consumers, the CFPB should avail itself of complaint information to inform the development and implementation of rules and standards that protect the public. Of course, complaints themselves do not necessarily indicate unsafe or illegal practices, only customer dissatisfaction; both NHTSA and CPSC have made this point clear. But while the complaints do not directly trigger regulatory action from agencies, they may alert them to instances of abuse or spark an investigation that uncovers misconduct or illegal dealings. Such investigations could result in agencies pursuing regulatory action to prevent future misconduct and better protect the public. Therefore, disclosure is a matter of accountability for companies and agencies alike: transparency allows the public to understand what an agency knows about potentially illegal or harmful activity and to press the agency to take appropriate action.

Opponents of CPSC's complaint disclosure argued that disclosing unverified claims could incorrectly label products as defective or unsafe and, as a result, mislead consumers. However, a report by the Government Accountability Office showed that manufacturers have claimed material inaccuracies in only a fraction of complaints.⁷ But as noted in the CFPB's proposal, these concerns, even if taken as valid, do not apply here. The complaints must come from the

⁴ National Highway Traffic Safety Administration, *The New Car Assessment Program Suggested Approaches for Future Program Enhancements National Highway*, Jan. 2007, *available at* <http://www.safercar.gov/staticfiles/safercar/pdf/810698.pdf> ("[T]he agency has improved the program by adding rating programs, providing information to consumers in a more user friendly format, and substantially increasing accessibility to the information via the website, www.safercar.gov. The program has strongly influenced manufacturers to build vehicles that consistently achieve high ratings, thereby increasing the safety of vehicles.").

⁵ See NHTSA, <http://www.nhtsa.gov/nhtsa/announce/press/Firestone/Update.html> (summarizing information from the complaint database, which had over 5,000 complaints on Firestone tires).

⁶ Jayne O'Donnell, *Consumers add sad stories to new complaint database*, USA Today, Apr. 11, 2011, <http://www.usatoday.com/money/industries/retail/2011-04-08-cpsc-complaints.htm>.

⁷ Government Accountability Office, *Consumer Product Safety Commission: Action Needed to Strengthen Identification of Potentially Unsafe Products*, Oct. 11, 2011, *available at* <http://gao.gov/products/GAO-12-30>.

cardholders themselves, and issuers are given a more than sufficient amount of time to show they did not issue the card in question. (See also our recommendations about timeliness, below.)

Existing agency complaint databases illustrate the value of disclosing complaint information to the public, but the CFPB has an opportunity to improve accessibility and raise the standard for disclosing information to the public as it follows in the efforts of other agencies. One area where the CFPB has an opportunity to improve on existing complaint databases would be to provide summary information, such as the total number and type of complaints received and the most commonly named issuers. (See also our recommendations on usability, below.)

Advancing Open Government

We applaud the CFPB for having sought to establish high standards for transparency and accountability as part of the young agency's culture.⁸ In addition, the CFPB has embraced innovation, branding itself as a "21st century agency"⁹ that would use the latest in "crowd-sourcing" technology to perform its duties.¹⁰ The CFPB's proposed policy statement would advance that commitment to transparency and innovation.

Moreover, the CFPB's proposal is consistent with the Obama administration's transparency policies. On his first full day in office, President Obama issued a memorandum on the Freedom of Information Act (FOIA), establishing a clear presumption that government information should be publicly available and directed agencies to "take affirmative steps to make information public."¹¹ In his memorandum on open government issued the same day, Obama stated that his administration would "disclose information rapidly in forms that the public can readily find and use."¹² Additionally, in his open government memorandum, Obama remarked, "Knowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge." This is precisely the sort of crowd-sourcing that Warren called for and that the CFPB's proposed database would enable. The CFPB's proposal is also aligned with the Office of Information and Regulatory Affairs' guidance on informing consumers through smart disclosure¹³ and consistent with the administration's commitment in its National Action Plan for the Open Government Partnership to promote smart disclosure.¹⁴ In addition, the CFPB's

⁸ See e.g. <http://www.consumerfinance.gov/open/> ("Transparency is at the core of our agenda, and it is a key part of how we operate.").

⁹ Consumer Financial Protection Bureau, Building the CFPB: A Progress Report, July 18, 2011, available at <http://www.consumerfinance.gov/report/building-the-cfpb/>.

¹⁰ Bill Swindell, *Warren Outlines Sweeping New Approach to Consumer Financial Protection*, National Journal, Oct. 29, 2010, <http://www.nationaljournal.com/daily/warren-outlines-sweeping-new-financial-protection-approach-20101026>.

¹¹ Barack Obama, Freedom of Information Act, The White House, Jan. 21, 2009.

¹² Barack Obama, Transparency and Open Government, The White House, Jan. 21, 2009.

¹³ Cass R. Sunstein, Informing Consumers through Smart Disclosure, Office of Information and Regulatory Affairs, Sept. 8, 2011, available at <http://www.whitehouse.gov/sites/default/files/omb/infereg/for-agencies/informing-consumers-through-smart-disclosure.pdf>.

¹⁴ The Open Government Partnership National Action Plan for the United States of America, Sept. 20, 2011, available at http://www.whitehouse.gov/sites/default/files/us_national_action_plan_final_2.pdf.

proposal would support the administration's Open Innovation Strategy to improve access to government data and encourage market transparency.¹⁵

Finally, the CFPB's proposal fully comprehends its responsibilities and authority under FOIA. We strongly agree that 5 U.S.C. 552(a)(2)(D) requires the CFPB to proactively disclose online information that is "likely to become the subject of subsequent requests," and we agree that the information proposed for inclusion in the database is likely to be repeatedly requested.

Recommendations to Improve the Collection of Information

To best achieve the benefits of disclosure, the CFPB must begin with the most effective collection of information. Failing to collect the proper information, or collecting information without adequately explaining what is being asked or how it will be used, can limit the validity of analyses that the agency or the public might perform. We offer the following recommendations for most effectively collecting credit card complaint information.

First, the complaint form should clearly notify submitters how the CFPB plans to use the information and that some portions of the information will be publicly disclosed. This notification should be early in the form and in plain language so submitters are fully informed. For instance, each form field could indicate whether or not it will be published in the database. (See also our recommendations about disclosing narrative information below.) In addition, the form should notify submitters that their complaint may be disclosed under FOIA, but that their personal information will not be disclosed.

Second, the complaint form should be designed to collect needed information in a way that most accurately represents a consumer's experience. In particular, submitters should be able to select more than one complaint category since problems can be multifaceted. In addition, we encourage the CFPB to collect demographic and protected class information from submitters to enable richer analyses and aid in the detection of possible discrimination.

Third, we encourage the CFPB to clarify its procedures on complaints collected through means other than its online form. CFPB receives complaints "on its website and by telephone, mail, fax, and by referral from other agencies."¹⁶ We recommend that CFPB ensure the database disclose complaints received through all means so consumers can be fully informed.

Recommendations to Improve the Disclosure of Information

¹⁵ Department of Commerce, The Competitive and Innovative Capacity of the United States, Jan. 2012, *available at* http://www.commerce.gov/sites/default/files/documents/2012/january/competes_010511_0.pdf.

¹⁶ Consumer Financial Protection Bureau, Consumer Response Interim Report on CFPB's Credit Card Complaint Data, Nov. 30, 2011, *available at* <http://www.consumerfinance.gov/pressrelease/consumer-financial-protection-bureau-releases-initial-report-on-credit-card-complaints/>.

To best achieve the benefits of disclosure, the CFPB must disclose complaints in the most effective manner. The right information must be disclosed in a timely manner in ways that can be readily accessed and used by the public. We offer the following recommendations for most effectively disclosing complaints:

Content. The CFPB should ensure that the public has access to all relevant information contained in the database. Under the CFPB's proposal, the public will have access to information

including but not limited to: The subject area or areas covered by the credit card complaint; the name of the card issuer; the zip code in which the consumer lives; the date of the complaint; and whether and how an issuer responded.

We agree that those types of information should be available to the public. In addition, OMB Watch recommends disclosing additional information that would benefit consumers and researchers, particularly consumer and issuer narratives and detailed response data.

We urge that the narrative description of the complaint and the issuer's response be disclosed. The narrative fields are important because they more fully explain the specific activities being complained about and the context in which they occurred. These fields will allow the public to better understand and evaluate the complaints. OMB Watch supports the CFPB's plan to study approaches to disclosing these narratives while minimizing privacy risks. We suggest an approach where the complaint forms offers an opt-in field that would be published and a supplement field for confidential information that would not be published. In addition, we encourage the CFPB to explore the use of automated algorithms to highlight potential instances of personal information for the consumer or issuer to review prior to submitting the narrative. For instance, a string of numerical characters in the format XXX-XX-XXXX might represent a customer's Social Security Number. These approaches would minimize the risk of publishing private information without requiring manual staff review.

We also recommend that the public have access to detailed information on the resolution of complaints. In addition to the issuer's narrative response, the database should include categorical information describing the issuer's response and the consumer's reply to the issuer's response. In addition, a complete timeline should be disclosed, including actions taken by the issuer or the CFPB. Companies' responses to complaints are again critical for consumers to best evaluate company performance.

In addition, the CFPB should explore if it may be possible to identify particular financial products, in addition to their issuer. This information may be meaningful to consumers and researchers, as the number and nature of complaints could vary considerably among different cards offered by the same issuer.

Finally, we encourage the CFPB to consider ways to disclose demographic information while respecting consumers' privacy. Releasing demographic data could enable research on the impacts of issuers' actions and perhaps deter discriminatory practices.

Usability. The CFPB should ensure that its database is user-friendly for the general public and has robust functionality. Under the CFPB's proposal,

The public will have online access to the database. The database will enable user-defined searches. The fields for each complaint will be linked with a unique identifier, enabling reviewers to aggregate the data as they choose, including by complaint type, issuer, location, date, or any combination of these variables. Users also will be able to download the data so that they can carry out additional review.

We agree that the database should offer these features. In addition, the database should provide easy-to-use and robust methods to explore the information. Users should be able to browse complaints, to search and sort by any of the database fields, to export results, and to download the complete dataset. Downloads should be available in open formats such as XML. In addition, users should be able to subscribe to user-defined updates by email or RSS.

Users should be able to generate reports and visualizations, and the database should supply appropriate contextual information. For instance, a user should be able to search for a particular issuer and see not merely a list of any complaints about that issuer, but the total number of complaints involving that issuer and its resolution rate, as well as how those figures rank compared to its market share and other issuers. Additionally, there should be easy ways to explore the overall trends of complaints across the entire industry. Graphs or tables should allow users to see the number of complaints for different categories or for credit card companies over time.

Timeliness. The CFPB should ensure that information is available to the public in a timely manner. Under the CFPB's proposal,

The CFPB will update the database on a regular basis. To provide an issuer sufficient time to establish that it did not issue the credit card listed in a particular complaint, the update will not take place until at least one month after submission.

We feel that a one-month delay is a generous period of time for companies to reply if they have been incorrectly identified as a card's issuer. We urge the CFPB to post all complaints to the database as soon as possible, with a *maximum* delay of 30 days. Establishing a maximum delay of 30 days would ensure timely public access without subjecting issuers to significant risk of unwarranted reputational injury because the chances of misidentification are so low. As the proposal states, "the issuer of the applicable credit card can be reliably identified from the submitted credit card number."

Recommendations for Next Steps

Under the CFPB's proposal, complaints about issuers with less than \$10 billion in assets are referred to the relevant prudential regulator and are not processed further by the CFPB. We encourage the CFPB to disclose all the complaints it receives, in consultation with the relevant prudential regulators, so that the public can be fully informed regardless of which agency investigates a complaint. In addition, we encourage the CFPB to make its database available for other regulators in order to disclose complaints they receive directly.

Under the CFPB's proposal, the database would be "limited to credit card complaints." However, the CFPB is already collecting consumers' mortgage complaints,¹⁷ and the CFPB expects to begin accepting complaints about additional product types in 2012.¹⁸ Because we expect that disclosure would have the same benefits for complaints about mortgages and other financial products as for credit cards, we encourage the CFPB to disclose complaints about these other products as well.

Conclusion

The CFPB should adopt the proposed policy statement, with the recommended revisions, in order to empower consumers, improve market functioning, encourage corporate accountability, and uphold government transparency.

OMB Watch appreciates the opportunity to comment on the CFPB's proposed policy statement on the disclosure of certain credit card complaint data. We hope that you will take our recommendations into consideration. If you have questions about our comments or want to discuss the issues further, please feel free to contact us.

Sincerely,



Sean Moulton
Director, Federal Information Policy
OMB Watch



Gavin R. Baker
Federal Information Policy Analyst
OMB Watch

¹⁷ Consumer Financial Protection Bureau, Mortgage Complaint Form, *available at* <https://help.consumerfinance.gov/app/mortgage/ask>.

¹⁸ Consumer Financial Protection Bureau, Consumer Response Interim Report on CFPB's Credit Card Complaint Data, Nov. 30, 2011, *available at* <http://www.consumerfinance.gov/pressrelease/consumer-financial-protection-bureau-releases-initial-report-on-credit-card-complaints/>.