June 4, 2018

The Honorable J. Michael Mulvaney
Acting Director
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington DC 20552


Dear Acting Director Mulvaney:

Thank you for this opportunity to provide the Bureau of Consumer Financial Protection with feedback on the Bureau’s public reporting of consumer complaint information. This comment letter also contains information relevant to the Bureau’s Request for Information (RFI) on the Bureau’s Complaint and Inquiry Handling Processes, Docket No. 2018-0014.

The Consumer Data Industry Association (CDIA) is an international trade association representing over 100 corporate members that educates policymakers, consumers and others on the benefits of the responsible use of consumer data. CDIA members’ products are used in billions of transactions each year, expanding consumers’ access to a market that is innovative and focused on their needs. In this way, the CDIA and its members serve one of the essential goals that Congress set for the Bureau -- ensuring that “markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.”

The CDIA shares longstanding and widespread concerns with the Bureau’s complaint reporting and database. The collection and public dissemination of unverified complaints has the potential to mislead the public and distort public policy choices. These problems are compounded when the “Bureau’s consumer complaint database is riddled with errors and distrusted by some of its own employees.” Moreover, the Bureau’s reporting of information supplied by anonymous sources seems particularly inapt in light of the current focus on the misinformation created and republished online.

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In addition to these general concerns, the CDIA and its members have specific, unique concerns with the Bureau’s public reporting of consumer complaints. These concerns arise because consumer reporting companies -- unlike other entities subject to the Bureau’s activities -- are not consumer-facing, are subject to congressionally mandated standards with respect to consumer dispute processing, and are often named in complaints that actually relate to issues between the consumer and another party. Notwithstanding these important differences, the Bureau has largely adopted a one-size-fits-all approach to the reporting of consumer complaints that is unfair and inaccurate when applied to CDIA members.

In 2015, the CDIA urged the Bureau to delay publishing Monthly Complaint Reports until the Bureau could address critical issues regarding the fairness and accuracy of the information it would make public. That request was not granted. Today, the CDIA renews its request that the Bureau not publish complaint data unless and until it can revise the database and related reporting to make it fair and accurate. Such restraint would be consistent with the instructions Congress provided to the Bureau, which call for specific reports at specific times to specific government officials -- not routine public summaries of unverified complaints.\(^4\)

Additional efforts by the Bureau to engage with industry on these issues would be particularly appropriate in light of the fact that CDIA members and others are voluntarily participating in the Bureau’s complaint portal system. The Bureau has the authority to require timely responses to consumer complaints only by entities “subject to supervision and primary enforcement by the Bureau pursuant to section 5515 of this title.”\(^5\) This authority applies only to depository institutions with assets over $10 billion -- and not to credit reporting companies.\(^6\)

This letter details the CDIA’s specific concerns with the Bureau’s reporting of consumer complaint information. These discrete issues also provide vivid examples of the general problem with the Bureau’s approach to complaints: in its effort to provide large amounts of data to the public, the Bureau lost sight of its responsibility to ensure that the data was not misleading or confusing. Unless and until the Bureau can appropriately characterize, explain, and contextualize complaints, its database and reports carry an unacceptably high risk of misleading or misinforming the public.

\(^4\) See 12 U.S.C. § 5493(b)(3)(C) (requiring annual reports to Congress regarding complaints and responses); 12 U.S.C. § 5496(c)(4) (requiring semi-annual reports to the President and congressional committees that include complain analysis).


Summary of Comment

As the CDIA has repeatedly explained to the Bureau, there are four fundamental problems with the Bureau’s current approach to complaints as applied to credit reporting issues. The Bureau database and reports inaccurately reflect the complaint volume and trends associated with CDIA members because the Bureau inappropriately:

- counts complaints before the dispute resolution process concludes;
- allows complaints to be misattributed to credit reporting companies;
- counts complaints submitted by credit repair services; and
- provides inadequate context for the volume of complaints.

The first three issues inflate complaint totals. The fourth makes matters worse by failing to provide the context needed to prevent the inflated numbers from misleading the public.

Counting Complaints Before the Dispute Resolution Process Concludes

Credit reporting, unlike all other industries within the Bureau’s purview, has a detailed mechanism established by federal law for consumers to use when they wish to dispute data in their files. That mechanism is set forth in the Fair Credit Reporting Act (FCRA), and is reflected in the Bureau’s own description of how such disputes should be addressed. On the Bureau’s website, the question “How do I dispute an error on my credit report?” is answered by the Bureau telling consumers that they should “contact both the credit reporting company and the company that provided the information.” Indeed, the Bureau goes on to give consumers detailed instructions and sample letters to use in order to resolve such disputes outside the Bureau’s complaint process. The Bureau also examines credit reporting companies’ consumer services teams and is fully aware of the millions of dollars invested in working with consumers who have questions or submit disputes.

Unfortunately, although the Bureau makes clear that consumers should use this distinct credit report dispute process, it does not prevent them from instead using the Bureau complaint process. Indeed, the same page that directs consumers to the dispute process includes a link to submit a credit reporting complaint, which includes a Bureau promise to “forward your issue to the company, give you a tracking number, and keep you updated on the status of your complaint.” The Bureau has also taken to Twitter and Facebook in the past to urge consumers to submit complaints about their credit reports directly to its portal.

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9 See id. (linking to instructions and template letter).
10 Id.
Based on complaints filed with the Bureau, it appears that some consumers do not take advantage of the FCRA dispute process and instead move directly to the Bureau’s portal. The Bureau’s statistics on complaints against credit reporting companies are therefore inflated by disputes that relate to the accuracy or completeness of information furnished to credit reporting companies. These “first-look disputes” do not belong in the Bureau’s complaint system. However, one CDIA member estimates that as many as two thirds of their Bureau complaints were in fact disputes regarding data furnished to the company -- and not about any allegedly improper action by the company itself.

If the Bureau is determined to make credit reporting complaint data public, it must make that data more accurate by reducing the submission of “first-look disputes” to the Bureau complaint portal. This effort could begin by educating consumers as to the differences between disputes about data and complaints about the actions of the credit reporting company itself. To buttress that outreach, the Bureau should take additional steps to encourage the consumer to complete the “first-look dispute” process. Such steps could include requiring that the consumer utilize the FCRA dispute process before filing a complaint through the Bureau portal.\footnote{Other steps could include requiring or allowing the Bureau, consumer, and/or company to classify a consumer’s submission, including whether it is a complaint, dispute, or inquiry. See Bureau Request for Information Regarding Consumer Complaint and Consumer Inquiry Handling Processes, 83 Fed. Reg. 74 (April 17, 2018).}

The result of such efforts would be more accurate complaint data that would help consumers, credit reporting companies and the Bureau itself distinguish between disputes over the data furnished to credit reporting companies and the practices of those companies.

**Counting Misattributed Complaints**

The failure of the Bureau to exclude “first-look disputes” from its complaint database leads to complaints being misattributed to CDIA members. The CDIA identified this problem in its September 22, 2014 Comment Letter on the Bureau’s Federal Register notice regarding the disclosure of consumer complaint narrative data. Unfortunately, the Bureau never saw fit to address this essential point:

“CDIA members operate third-party databases regulated by the Fair Credit Reporting Act. The FCRA establishes one set of duties for consumer reporting agencies and a separate set of duties for those who furnish data to consumer reporting agencies. These duties focus on, for example, accuracy of data and procedures for processing a consumer’s dispute regarding data. Though the FCRA establishes separate duties when a consumer has a potential problem with how his or her lender reported data to a credit Bureau, the consumer submits this dispute to the credit Bureau and the lender (data furnisher) operates in the background to investigate the dispute. The
consumer, therefore, could perceive a problem in the dispute process to be the result of the credit Bureau’s actions when it is actually the fault of the furnisher.

In a review of the FTC’s 2012 publication of research on the accuracy of credit reports, CDIA found that 88% of the complaint types identified by consumers pertain to the manner in which the data furnisher reported their accounts and not to the manner in which the consumer reporting agency matched the account to a credit report. This is not surprising since lenders are very successful in reporting the correct identifying data about their customers which, in turn, allows consumer reporting agencies to load data accurately. Often consumers were disputing balances, which strongly suggest that their lenders were reporting accurate information, but their customers had seen a more recent statement regarding their account.”

In this same letter, the CDIA described finding a similar pattern when it worked with its members to review more than a thousand consumer complaints submitted through the Bureau’s complaint portal. Although all of these complaints were attributed to CDIA members, about 77% were actually about how lenders reported data.

The Bureau did not act in response to the CDIA’s thoughtful explanation of the problem of misattribution. Instead, the Bureau took a small step in the right direction by stating in its comments accompanying the final rule that “the Bureau empowers the consumer to elect whom to submit a complaint against (dependent, as noted, on an existing commercial relationship).” The parenthetical reference to an “existing commercial relationship” demonstrates that the Bureau understands that the complaint portal is not designed or intended to include situations where a credit report accurately reflects information reported by lender. However, this statement fell well short of actually addressing the problem of misattribution, and the Bureau continues to publish individual complaints and compile reports that significantly inflate the number of complaints against CDIA members.

**Counting Complaints Submitted by Credit Repair Services**

Many of the complaints compiled by the Bureau relating to CDIA members appear to have been generated by credit repair agencies. As the Bureau well knows, many credit repair services are scams that target anxious consumers. In particular “the company may claim that it can guarantee a specific increase in your credit score or get rid of negative credit information in your credit report, even though the information is accurate and current.”

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13 See, e.g., Desmond Brown, How to avoid credit repair service scams, (September 23, 2016), https://www.consumerfinance.gov/about-us/blog/how-avoid-credit-repair-service-scams/.
14 How can I tell a credit repair scam from a reputable credit counselor? (June 8, 2017), https://www.consumerfinance.gov/ask-cfpb/how-can-i-tell-a-credit-repair-scam-from-a-reputable-credit-counselor-en-1343/
Credit repair agencies advance this scam by filling the Bureau’s complaint portal with inaccurate claims.

The fact that fraudsters find the Bureau’s complaint portal helpful underscores the need for the Bureau to either better control the content of the database or stop making those contents public. The public is worse off when the Bureau’s systems can be used in support of ongoing deception, and when the Bureau includes false claims in its complaint reporting. For the same reasons, the reputations of CDIA members are unfairly harmed in both individual cases and by the reporting of inflated numbers of complaints against them. Unless and until the Bureau screens out complaints generated by credit repair services, its complaint reports will mislead rather than inform.

**The Importance of Context**

The unfairness of the complaint inflation discussed above is compounded by the Bureau’s declining to work with the CDIA to normalize the Bureau’s data. While such normalization is not a panacea, it would at least provide the context necessary to make the raw data in the Bureau’s complaint reporting less misleading.

Here too, the CDIA has been trying to work constructively with the Bureau for many years. In September 2014, the CDIA wrote the Bureau to urge it to develop and test a way to ensure that its monthly reports and individual company data were accompanied by essential context. The CDIA explained then what is still true today: merely presenting raw data is not enough to educate consumers.

> “In the CFPB’s Semi-Annual Report issued May 2014, the Bureau reports that in May 2013 they added to their public disclosure complaints on credit Bureaus dating back to October 22, 2012, and has collected 29,600 complaints.\(^{15}\) See the chart below for examples of how the CFPB could put these complaints into context:

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<thead>
<tr>
<th>Context Statistic</th>
<th>% of Consumer Complaining Relative to a Context Statistic</th>
</tr>
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<tr>
<td>40,000,000 consumers obtain a copy of their credit file.(^{16})</td>
<td>0.074%</td>
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</tbody>
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Each nationwide consumer reporting agency has 1.3 billion active tradelines.\(^{17}\) CDIA estimates that a total of 3 billion consumer credit reports are sold annually.\(^{14}\)  

| Each nationwide consumer reporting agency has 1.3 billion active tradelines. | 0.0023% |
| CDIA estimates that a total of 3 billion consumer credit reports are sold annually. | 0.0009% |

To its credit, the FTC has attempted to include context in their reports on complaints. Consider the following excerpt from their 2009 report on the Fair Debt Collection Practices Act:

‘The Commission recognizes that third-party collectors contact millions of consumers each year. The number of consumer complaints the FTC receives about such collectors is therefore but a small percentage of the overall number of consumers contacted by debt collectors.’\(^{18}\)

The CFPB does not provide context in their current reports on complaints and publishing narratives only exacerbates the unfairness and misrepresentative nature of the CFPB’s presentation of complaint data. In fact there is no means by which a consumer narrative can be put into a fair context relative to a company’s practices. It convicts even when a CFPB examiner’s review of the same company would find no fault with its compliance with law. The irony here is that the examiner’s report cannot, for good reasons, be published and thus the company is left to try and defend itself complaint narrative by complaint narrative. This is unfair and does not advance the goal of better-informed consumers.”

The concerns and suggested approach that the CDIA set forth almost four years ago still make sense today. For example, a chart comparing complaints to the size of a marketplace would advance consumer understanding. Providing context would make clear that the total number of complaints is likely to be higher for products, such as credit reports, which are used in billions of transactions each year. Likewise, consumers should understand that the number of complaints per company will be higher when an industry, like consumer reporting, is highly concentrated. Finally, Bureau complaint reports should include clear and conspicuous disclaimers about the accuracy and other recognized limitations of the data.

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\(^{17}\) Id., 14.

Conclusion

The Bureau for many years has presented complaint data that falls short of educating the public. As the Acting Director has suggested, the Bureau’s historic approach to publishing complaints sometimes seems to have more in common with Yelp than with the careful methodology and language of most federal government reports. In addition to the general problems with the Bureau’s approach to complaints, unique issues make the Bureau’s approach to credit reporting complaints particularly inaccurate and unfair.

The Bureau should stop making its complaint portal public, and stop publishing complaint reports, until it has cleared away the backlog of problems that the CDIA and others have been urging it to address for many years. If those problems prove insuperable, the Bureau should -- like the FTC and countless other federal agencies -- provide analytical reports about complaints to Congress rather than publishing raw data. Such reports would be more consistent with the Bureau’s responsibility to “. . . provide consumers with timely and understandable information to help enable them to make responsible financial decisions and to enhance market efficiency and transparency.”\(^ {19} \)

In light of our longstanding concerns with the Bureau’s complaint reporting process, the CDIA particularly appreciates this opportunity to respond to the Bureau’s RFI, and to try again to make the complaint reporting process fair and meaningful. We hope that the foregoing points the way towards reforms that would address significant issues that currently weaken, rather than foster, consumer understanding of the credit reporting process.

Sincerely,

Eric J. Ellman
Senior Vice President, Public Policy & Legal Affairs

\(^{19} \) 12 USC § 5511(b)(5).