



September 29, 2016

Via Electronic Delivery

Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street N.W.
Washington, D.C. 20552

**RE: Comments in Response to Agency Information Collection Comment
Request OMB Control Number 3170-00NEW – Consumer Response
Company Response Survey**

Dear Ms. Jackson:

On behalf of the Consumer Data Industry Association (“CDIA”), we submit the following comments regarding the Consumer Financial Protection Bureau (“CFPB” or “the Bureau”) Agency Information Collection Comment Request on a “Consumer Response Company Response Survey.” CDIA appreciates the Bureau’s efforts to continually improve its Consumer Complaint Database Portal (“the Portal”) to make it a valuable tool for consumers and financial service providers alike.

I. Introduction

CDIA is an international trade association, founded in 1906, of more than 130 corporate members. Its mission is to enable consumers, media, legislators and regulators to understand the benefits of the responsible use of consumer data which creates opportunities for consumers and the economy. CDIA members provide businesses with the data and analytical tools necessary to manage risk. They help ensure fair and safe transactions for consumers, facilitate competition and expand consumers’ access to a market which is innovative and focused on their needs. CDIA member products are used in more than nine billion transactions each year.

CDIA members have been complying with federal law and regulations specific to the credit reporting industry for decades. In particular, the Fair Credit Reporting Act (“FCRA”)¹, which the Bureau now enforces, governs the collection, assembly, and use of consumer report information and provides the framework for the credit reporting system in the U.S. The FCRA outlines many consumer rights with respect to the use and accuracy of the information contained in their credit reports.² In particular, a consumer has the right to dispute the accuracy of any information included in his or her consumer file with a CRA.³ Unfortunately, the Portal has made the established process for CRAs to resolve consumer disputes more difficult by encouraging consumers to submit accuracy disputes through the CFPB instead of through the process Congress required in the FCRA. As a result, many consumers may be confused as to how to properly dispute information in their credit report. CRAs are further harmed when the Portal misattributes accuracy disputes as “complaints,” resulting in increased complaint totals in published reports. We are concerned that collecting, and ultimately publishing, Consumer Survey information will only increase the harm caused by the current structure of the Portal.

II. Background on the CRA Industry & FCRA Dispute Process

The FCRA provides a framework for maintaining the accuracy of credit report data by providing a mechanism for consumers to dispute information on their credit reports they believe to be inaccurate.⁴ Consumers who suspect a potential problem with data in their credit report may submit a dispute to the CRA who furnished the report, which obligates the CRA to investigate the dispute and report the results of its investigation to the consumer. Consumers may also submit disputes directly to data furnishers, who supply information reflected on consumer reports (“tradelines”). Following this statutory mandate, CRAs have invested millions of dollars so that consumers have a streamlined process to correct inaccurate information.

The Portal circumvents this Congressionally-authorized process for resolving disputes by conflating disputes with “complaints.” As currently designed, the Portal allows consumers to submit complaints about the accuracy of their credit report information, even where consumers indicate that they have made no effort to submit a dispute to the CRA. The Portal then attributes a “complaint” to the CRA, even though the CRA has had no contact with consumers or opportunity to review these “first look

¹ 15 U.S.C. § 1681 *et seq.*

² 16 CFR Part 698, App. F.

³ 15 U.S.C. § 1681i(a)(1)(A).

⁴ *See* 15 U.S.C. § 1681i.

disputes.”⁵ The current treatment of first-look disputes, regarding the accuracy or completeness of information contained in a consumer report in the Portal is inconsistent with the statutory framework for complaint referrals in Section 611(e) of the FCRA.

Instead, the Portal should direct consumers disputing the accuracy of credit report information or tradeline to follow the process blessed by the FCRA, as the current process results in misattribution of “complaints” to CRAs, skewed data for the CFPB, and unnecessary confusion and delay for consumers. CDIA is concerned that the soliciting Consumer Surveys will only exacerbate the problems described above by encouraging consumers to express their level of satisfaction with a process that is not designed to solve their problems. CDIA urges the CFPB to revise the Portal intake form to facilitate consumers to submit first-look disputes directly to CRAs or their lenders to ensure that their rights under the FCRA are protected.

III. CDIA is concerned that the proposed collection of information will have little practical utility to the Bureau’s proper performance functions without major changes to the Portal.

The CFPB launched its Consumer Complaint Database in 2012, and has subsequently updated the consumer reporting function to allow a consumer the option to publicly share their complaint narrative against a specific company. After the CFPB receives a complaint, the Bureau forwards the complaint to the company. The company has 15 days to respond and confirm a commercial relationship with the consumer. However, this model does not adequately address the nuances of the credit reporting industry, where CRAs do not have a direct commercial relationship with the consumer. Consumers may mistakenly attribute the problems with their credit records as the fault of the CRA and not the furnisher. CDIA believes that the current Portal leads to the misattribution of complaints to CRAs where the complained-of conduct relates to another party in the credit reporting ecosystem.

The Bureau intends to use Consumer Response Company Response Survey information to “inform [the] CFPB's work to supervise companies, enforce Federal consumer financial laws, and write better rules and regulations.” Yet, this use overshoots the intended purpose of the Portal and would result in little practical information.

⁵ CDIA explained this problem at length in its August 31, 2015, letter regarding the Bureau’s *Request for Information Regarding the Consumer Complaint Database: Data Normalization*, Docket No.: CFPB 2015-0030.

Twelve U.S.C. § 5534, the statutory authority for the Portal, directs the Bureau to establish procedures to provide a timely response to consumers to complaints against, or inquiries concerning, a covered person. Section 5534 also provides that the Bureau should create procedures related to communicating with consumers about (1) steps that have been taken by the regulator in response to the complaint or inquiry of the consumer; (2) any responses received by the regulator from the covered person; and (3) any follow-up actions or planned follow-up actions by the regulator in response to the complaint or inquiry of the consumer. The Bureau's statutory authority in administering the Portal is only to help resolve consumer complaints. The Dodd-Frank Act does not give the Bureau the authority to use the proposed consumer survey information to inform its supervision, enforcement and rulemaking priorities.

This new role for the Portal is particularly alarming for CDIA's members because they are uniquely situated with respect to how the Portal attributes complaints to them. Many of the Portal complaints attributed to CRAs by the Bureau actually concern tradelines supplied to CRAs by data furnishers. Indeed, the Bureau's own monthly Complaint Report recently indicated that 77% of complaints attributed to CRAs are accuracy disputes.⁶ In each circumstance, it is important to remember that tradelines included in credit reports are not created by CRAs; they are supplied by data furnishers. Thus, an accuracy dispute is not an actual complaint about the CRA's conduct but rather an inquiry into whether a data furnisher appropriately reported the status of an account. Without major changes to the Portal, Consumer Survey information will yield misleading information about a CRA's record in responding to complaints.

Of course, there may be instances where consumers have true "complaints" with CRAs rather than a dispute regarding the accuracy of their credit report. In such an instance, CDIA's members participate in the Portal and work with consumers to resolve complaints. But unless and until survey information captures and properly attributes only complaints, rather than complaints and disputes, it will have little practical use and could unfairly prejudice CRAs as the Bureau uses survey information to set its priorities.

CDIA is also concerned that survey responses will over-represent negative opinions. Indeed, millions of consumers have successfully resolved disputes through CRA-managed dispute portals such as e-OSCAR. Yet the survey information will only focus on those consumers who did not choose to submit first-look disputes to CRAs. Understandably, these consumers may be frustrated by this process because there is

⁶ Monthly Complaint Report, Vol. 11 (May 2016) available at: http://files.consumerfinance.gov/f/documents/201605_cfpb_monthly-complaint-report-vol-11.pdf

more room for delay where accuracy disputes do not follow the route specified by Congress and into which CRAs have invested substantial resources. Accordingly, negative bias will be inherent in consumer survey responses, and the Bureau should account for this in considering the utility of such information.

Given the concerns described above, the Bureau should refrain from publishing the Consumer Surveys. But, if the Bureau chooses to do so, it should clearly note that the results are only based on consumer feedback submitted directly to the Bureau and does not fully reflect an institution's overall consumer satisfaction rating.

IV. CDIA believes the Bureau must release more information about the methods and assumptions used to calculate the information collection burden before the industry can provide comment.

The Bureau estimates that the information collection will impact 43,050 respondents and create a total annual burden of 3,900 hours. Yet, the Bureau has not published the methods and assumptions used to calculate this burden. CDIA requests that the Bureau publish this information so that the public may provide appropriate comment. Furthermore, CDIA requests that the Bureau release a draft of the proposed Consumer Survey in order for the industry to adequately provide comment on the proposed information collection burden.

V. CDIA believes that the Bureau can enhance the quality and utility of the information in the Portal by properly identifying the subject of a complaint, by distinguishing bona fide consumer complaints from frivolous disputes, and by including clear and conspicuous disclaimers about the accuracy and other limitations of the data.

Earlier portions of this letter identified the problem that many Portal "complaints" are truly disputes about information submitted to CRAs through data furnishers. In this regard, Consumer Survey responses may be attributed to CRAs that are not the source of the consumers' complaint, but have merely served as a conduit for the furnished data through a credit report. CRAs should be authorized to distinguish between complaints about a furnisher and complaints about the CRA in order to alleviate this problem. In the former situation, Consumer Survey responses and any related rating should be attributed to the furnisher rather than the CRA. This small change would make the data more fair, accurate, and reliable.

A related problem concerns frivolous disputes. Many credit repair organizations have the practice of submitting substantial volumes of the same or similar disputes for the same tradeline. Known as “jamming,” this process is typically an attempt to dispute accurate information with CRAs in the hopes that data furnishers will not respond within the timeframe set by the FCRA, ultimately resulting in deleting the disputed tradeline from the consumer’s credit report.⁷ Currently, the Portal does not have a means to segregate these frivolous disputes from legitimate ones. As a result, credit repair organizations who submit frivolous complaints on behalf of consumers may find themselves in the position of evaluating their level of satisfaction with a CRA’s response. Predictably, this would lead to lower ratings and inaccurate data for the Bureau as it uses Consumer Survey information to set priorities.

A function that would allow CRAs to designate Portal-submitted disputes as frivolous, and remove such disputes from survey populations, would improve the quality of the Bureau’s data. The FCRA, already includes such a process, authorizing a CRA to terminate investigation of an accuracy dispute it deems frivolous.⁸ In practice, having the ability to designate a dispute as frivolous is an important tool that CRAs use to focus resources on legitimate accuracy disputes that require thorough investigation rather than jamming attempts or disputes containing incomplete information.

Finally, CDIA expects that the CFPB will publish responses to the Consumer Survey in some manner through the Bureau’s Monthly Snapshot report.⁹ As it has in the past, the monthly snapshot has attributed accuracy disputes to the CRAs rather than furnishers, resulting in significantly inflated complaint totals for CRAs.¹⁰ These inflated totals are compounded by the failure to provide context about the relative numbers of consumers touched by the CRAs compared with even the largest financial institutions. While it may make for a good press release to claim that CRAs are the top complained-about companies, misattribution of furnisher disputes to CRAs and the failure to account for proportionality significantly inflates those totals and distorts public perception. Further, reporting only complaint totals without also recognizing the millions of consumers who successfully submit disputes directly to CRAs through the FCRA-approved process, similarly misleads the public and presents a negativity bias in Consumer Survey responses.

⁷ “Jamming Cleans Your Credit – Temporarily (Feb. 20, 2014) available at: http://www.creditcards.com/credit-card-news/clean-credit_report-dispute-jamming-1270.php#jamming.

⁸ 15 U.S.C. § 1681i(3).

⁹ See generally Monthly Complaint Report, Vol. 15 (September 2016) available at: http://files.consumerfinance.gov/f/documents/092016_cfpb_MonthlyComplaintReportVol15.pdf.

¹⁰ Press Release, “CFPB Monthly Complaints Snapshot Spotlights Credit Reporting Complaints,” (May 24, 2016) available at: <http://www.consumerfinance.gov/about-us/newsroom/cfpb-monthly-complaints-snapshot-spotlights-credit-reporting-complaints/>.

CDIA, therefore, urges the CFPB to include appropriate disclaimers with Consumer Survey results. For instance, if the Bureau chooses to make a company's average score public, it should specify that the results are only based on consumer feedback submitted directly to the Bureau and does not fully reflect an institution's consumer satisfaction rating. Otherwise, characterizing survey responses as a statistically valid indicator of a company's effectiveness at dealing with consumer disputes would be misleading to the public and damaging to CRA's reputation.

VI. Conclusion

CDIA appreciates the Bureau's continued attention to the Consumer Complaint Portal and efforts to find ways to maximize consumers' ability to provide positive feedback on their interactions with financial service providers. CDIA and our members look forward to continuing to work with the CFPB to improve the effectiveness and accuracy of the consumer complaint portal.

Thank you for the opportunity to comment. Please contact CDIA if you have any questions or need additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read 'E. Ellman', with a long horizontal flourish extending to the right.

Eric J. Ellman
Interim President and Chief Executive Officer
Senior Vice President, Public Policy & Legal Affairs